

**D-1**

**CITIZENS CLEAN ELECTIONS COMMISSION**

Title 2, Chapter 20, Article 1, Citizens Clean Elections Commission

**Amend:** R2-20-109



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August, 19, 2021

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION**  
Title 2, Chapter 20, Article 1, Citizens Clean Elections Commission

**Amend:** R2-20-109

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### **Summary:**

This regular rulemaking from the Citizens Clean Elections Commission (Commission) seeks to amend one rule in Title 2, Chapter 20, Article 1 related to General Provisions. Specifically, the Commission seeks to amend Section R2-20-109 related to Independent Expenditure Reporting Requirements. The Commission states the proposed amendment would clarify that under A.R.S. § 16-901(43), as interpreted by the Court of Appeals in *Arizona Advocacy Network Found. v. State*, 475 P.3d, 1149 (Ariz. App. 2020), entities that have certain tax status with the Internal Revenue Service (non-profit organizations under IRC 501(a)) need not file campaign reports otherwise required of entities that qualify as political committees under A.R.S. § 16-905.

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

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

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

This rulemaking does not establish a new fee or contain a fee increase.

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

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

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

The rulemaking amends R2-20-109, ensuring that organizations granted a reporting exemption in Arizona's campaign finance system do not have to file certain reports that might otherwise be required of organizations involved in candidate elections.

Organizations that have a tax exempt status pursuant to IRC Section 501(a), are expected to benefit because the rulemaking exempts them from reporting certain donations and some expenses.

**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 Commission concludes that the amendment proposes the least intrusive and least costly way to achieve the regulatory objective. The increased clarity of the application process for affected organizations outweighs the costs associated with the rule.

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

The rulemaking will directly affect candidates for state and legislative office, individual donors who may be related to candidates, other entities making expenditures or contributions in state or legislative elections, and organizations that have a tax exempt status pursuant to IRC Section 501(A).

The rulemaking imposes probable costs on participating candidates, as well as donors to those candidates. The rules impose a cost on the public, who may lose access to information regarding certain donations and expenses.

The agency will benefit by ensuring consistency across legal definitions where required by state law. Organizations that have a tax exempt status pursuant to IRC Section 501(a), also benefit because it exempts them from the additional paperwork associated with reporting certain donations and expenses required in an election.

The agency does not anticipate any additional FTEs or additional costs. The agency has determined that the rule change is necessary to align the Commission's rule with state statutes and court rulings.

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

The Commission did not make any changes to the proposed rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Commission did not receive any comments related to this proposed amendment while conducting this rulemaking

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

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

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

Not applicable. There is no corresponding federal law.

11. **Conclusion**

The Commission is requesting an immediate effective date for this amendment. Specifically, the Commission states an immediate effective date is necessary to ensure the rules are made consistent with statute and court decisions as soon as possible during the qualifying period set forth in the Clean Elections Act. The Commission indicates that the period in which participating candidates may collect qualifying contributions began August 1, 2021. Council staff believes the Commission has provided an adequate basis for an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) in that the immediate effective date is necessary to avoid a violation of state law, if the need for an immediate effective date is not created due to the agency's delay or inaction. Council staff recommends approval of this rulemaking with an immediate effective date.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Amy B. Chan**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Mark S. Kimble**  
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**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](http://www.azcanelections.gov)

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June 4, 2020

Governor's Regulatory Review Council  
1501 N. 15<sup>th</sup> Ave.  
Phoenix, AZ 85007

**Via E-Mail**

**Re: Request for approval of amendment to A.A.C. R2-20-109**

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. R2-20-109 and its economic impact statement.

I request approval by the Council with an effective date immediately upon filing the Council's certification with the Secretary of State because the period in which participating candidates may collect qualifying contributions begins August 1, 2021.

In summary:

- The record closed on May 28, 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 preamble had no study to disclose.
- The amendment does not require any new employees.
- The rulemaking item includes: the final rule and the Economic, Small Business and Consumer Impact Statement, and one written comment.

- One written comment in favor of the amendment was 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. §§ 16-941, -942, 956, 957, 958, 961.
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins  
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**  
A.A.C. R2-20-709.01, Independent Expenditure Reporting Requirements      Amend

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

Authorizing statute: A.R.S. § 16-956(A)(7).

Implementing statute: A.R.S. §§ 16-940, -941, 942, 956, 957, 958, 961.

**The effective date of the rule:**

Upon filing with the Secretary of State’s Office.

- a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):** An immediate effective date is necessary to ensure the rules are made consistent with statute and court decisions as soon as possible during the qualifying period set forth in the Clean Elections Act.
- b. **If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):** Not Applicable.

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 675, April 30, 2020

Notice of Proposed Rulemaking: 27 A.A.R. 639, April 30, 2020

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

Name: Thomas M. Collins

Address: 1616 W. Adams, Suite 110, Phoenix, AZ 85007

Telephone: (602) 364-3477

E-mail: ccec@azcleelections.gov 30

Web site: azcleelections.gov

6. **An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:** This amendment clarifies that under A.R.S. 16-901(43) as interpreted by the Court of Appeals, entities that have certain tax status with the Internal Revenue Service need

not file campaign reports otherwise required of entities that qualify as political committees under A.R.S. § 16-905.

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

8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:** Not applicable.

9. **A summary of the economic, small business, and consumer impact:** The amendment will lower compliance costs for certain kinds of financial entities, especially those that operate as a non profit under IRC Section 501(a). Those organizations do not have to disclose for purposes of Title 16, Chapter 6, certain expenses and received contributions that other entities that might be otherwise similarly situated do have to disclose. The cost of that information reduction will be borne by the voting public. The Agency does not anticipate increased costs or any need for additional FTEs.

10. **A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:** Not applicable.

11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:** The agency received one comment from a member of the public in support of the amendment.

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

a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:** No.

b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:** No.

c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:** No.

13. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:** None.

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

Not applicable.

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

TITLE 2. ADMINISTRATION  
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION  
ARTICLE 1. GENERAL PROVISIONS

### **R2-20-109. Independent Expenditure Reporting Requirements**

- A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:
  1. Expressly provided otherwise by another Commission rule; or
  2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a suitable process.
- B. Independent Expenditure Reporting Requirements.
  1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
  2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-941(D) and -958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
    - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
    - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
    - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
  3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
    - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
    - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
    - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
  4. For purposes of A.A.C. R2-20-109(B)(3):
    - a. Subject to A.R.S. 16-901(43) and notwithstanding any rule to the contrary of that section, An entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



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***MEMORANDUM***

**To: Governor's Regulatory Review Council**

**From: Thomas M. Collins**

**Date: 5.24.2020**

**Subject: Economic, Small Business and Consumer Impact Statement R2-20-109**

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1. An identification of the proposed rule making.

R2-20-109. 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.

Organizations that have a tax exempt status pursuant to IRC Section 501(a) benefit from the rule because it exempts them from reporting certain donations and some expenses that are otherwise required in connection with a state or legislative election. The costs will be born by the public, who may lose access to this information that might be required of similarly situated organizations.

Other entities making expenditures or contributions in state or legislative elections 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 does not anticipate any additional FTEs, nor additional costs, The agency's view is that this rule change is required by a recent Court of Appeals opinion and any agency cost.

Agency probable benefits: The rule is intended to ensure that those organizations granted a reporting exemption in Arizona's campaign finance system do not have to file certain reports that might otherwise be required of organizations involved in candidate elections.

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.

Any business directly affected will benefit and incur no costs from the change. The benefit arises directly from the amend, which explicitly reduces compliance requirements.

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

The agency did and does not anticipate any impact on private or public employment in any of the directly affected organizations.

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 a decrease in compliance costs

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

The agency would be open to any of the methods prescribed in section 41-1035. However, any anticipated impact is de minimis.

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

There is a probable cost to private persons and consumers who will lose access to certain reports that otherwise are required of organizations participating in election spending. On the other hand, the rule ensures the application of the extant statute for the organizations identified in question 2.

6. A statement of the probable effect on state revenues.

This rule does not have any probable impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

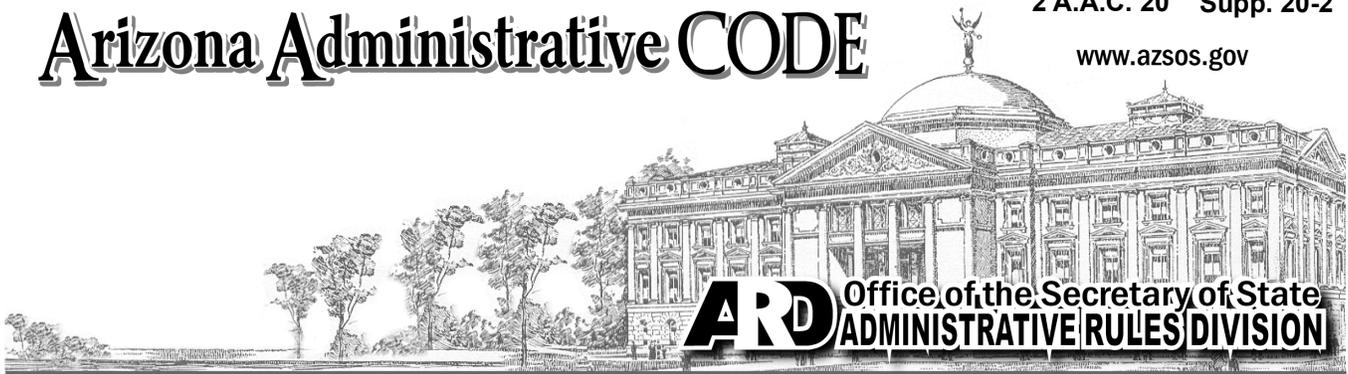
The amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that ensuring the statute's application to affected parties is necessary.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission amended this rule because of a recent court of appeals' decision.



## TITLE 2. ADMINISTRATION

### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

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

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

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2020 through June 30, 2020.

<a href="#">R2-20-701.</a>	<a href="#">Purpose and Scope</a> .....	<a href="#">24</a>	<a href="#">R2-20-702.01.</a>	<a href="#">Use of Assets</a> .....	<a href="#">25</a>
<a href="#">R2-20-702.</a>	<a href="#">Use of Campaign Funds</a> .....	<a href="#">24</a>	<a href="#">R2-20-703.01.</a>	<a href="#">Campaign Consultants</a> .....	<a href="#">25</a>

#### Questions about these rules? Contact:

Name: Thomas Collins, Executive Director  
 Address: Citizens Clean Elections Commission  
 1616 W. Adams  
 Phoenix, AZ 85007  
 Telephone: (602) 364-3477  
 E-mail: [ccec@azcleanelections.gov](mailto:ccec@azcleanelections.gov)  
 Website: [www.azcleanelections.gov](http://www.azcleanelections.gov)

#### The release of this Chapter in Supp. 20-2 replaces Supp. 20-1, 1-27 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 2. ADMINISTRATION**

**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

*Editor’s Note: The Office of the Secretary of State, Administrative Rules Division, complied with its legal obligation to publish the Notice of Rule Expiration filed for Sections R2-20-109 and R2-20-111 under A.R.S. § 41-1011(C) and 41-1056(G) and (J)(2) in Supp. 17-2, version 2. As a courtesy to the Commission, the Office also published R2-20-109 and R2-20-111 as adopted and made by the Commission because it stated the Governor’s Regulatory Review Council did not have the authority to file such a notice. On December 14, 2017, the Commission “re-adopted” rules in the disputed Sections of R2-20-109 and R2-20-111; therefore, our Division has removed the expired rule Sections as published in Supp. 17-2, version 2. The Office will not interpret the legality of any actions made by the Commission or the Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.*

*Editor’s Note: The Citizen’s Clean Elections Commission has filed a Notice of Public Information with the Office of the Secretary of State (Office) stating the Governor’s Regulatory Review Council (G.R.R.C.) “cannot effectively repeal the rules” in this Chapter. The Notice also states, “persons subject to the Act and Rules are advised that it is the Commission’s position [sic] that an action of G.R.R.C.... cannot relieve them of their obligations under the Act and Rules.” [published at 23 A.A.R. 1761] The Office has received a Notice of Rule Expiration from the G.R.R.C. stating R2-20-109 and R2-20-111 have automatically expired [published at 23 A.A.R. 1757]. Under A.R.S. § 41-1056(G), our Office publishes filed G.R.R.C. notices and has included the rule expiration in this Chapter. Since the Office is merely the publisher, it has not, nor will it interpret the legality of the G.R.R.C. authority to “effectively repeal rules.”*

*Editor’s Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).*

*Editor’s Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor’s Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R2-20-101 through R2-20-113, repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001; new Article 1, consisting of Sections R2-20-101 through R2-20-112, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).*

*Article 1, consisting of Sections R2-20-101 through R2-20-113, adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2).*

Section	
R2-20-101.	Definitions ..... 3
R2-20-102.	Repealed ..... 4
R2-20-103.	Communications: Time and Method ..... 4
R2-20-104.	Certification as a Participating Candidate ..... 4
R2-20-105.	Certification for Funding ..... 5
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## ARTICLE 1. GENERAL PROVISIONS

**R2-20-101. Definitions**

In addition to the definitions provided in A.R.S. § 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account at a financial institution designated by a political committee that is used solely for political campaign purposes.
4. "Candidate" means a natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. "Candidate for Statewide Office" means: A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector.
6. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
7. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
  - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
  - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.
- c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
14. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. "Legislative Candidate" means: A natural person seeking the office of state senator or state representative.
20. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. "Person," unless stated otherwise, or having context requiring otherwise, means: A corporation, company, partnership, firm, association or society, as well as a natural person.
22. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
23. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
24. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. "Unopposed" means in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.

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**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 23 A.A.R. 113, effective December 15, 2016 (Supp. 16-4).

**R2-20-102. Repealed****Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Repealed by exempt rulemaking at 19 A.A.R. 3518, effective September 27, 2013 (Supp. 13-4).

**R2-20-103. Communications: Time and Method**

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.
- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a

copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

**R2-20-104. Certification as a Participating Candidate**

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-941(B), but later chooses to run as a participating candidate, shall:
  1. Make the change to participating candidate status during the exploratory and qualifying periods only;
  2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
  3. Return all Political Action Committee (PAC) monies received;
  4. Not have made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
  5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
  6. Return all contributions received from another candidate's candidate committee.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
  1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
  2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(24); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
  3. Remitting the money to the Fund; or
  4. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.
- C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date. In the application, a candidate shall certify under oath that the candidate:
  1. Agrees to use all Clean Elections funding for direct campaign purposes only;
  2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;

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3. Will comply with all requirements of the Act and Commission rules;
  4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
  5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
  6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
  7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
  8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
  9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
  10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
  11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.
- D.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
  2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
  3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
  4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
  5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
    - a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
    - b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
- 6.** Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.
- E.** Loans. A participating candidate may accept an individual contribution as a loan or may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the contribution received or personal funds and loans shall not exceed the expenditure limits set forth in A.R.S. § 16-941(A)(1) and (2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a financial institution or bank, to a candidate used for the purpose of influencing that candidate's election shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F.** A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- G.** Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1420, effective April 30, 2010 (Supp. 09-3). Subsection R2-20-104(C)(8) amended by exempt rulemaking at 19 A.A.R. 1685, effective October 6, 2011; Subsection R2-20-104(D)(5) amended by exempt rulemaking at 19 A.A.R. 1685, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 115, effective December 15, 2016 (Supp. 16-4).

**R2-20-105. Certification for Funding**

- A.** After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B.** A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candi-

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date's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.

- C. A candidate may accept electronic \$5 qualifying contributions for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic \$5 qualifying. A \$5 contribution must accompany every \$5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or debit card. A non-refundable transaction fee may be assessed on electronic \$5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report in a manner that indicates the transaction fees have been accumulated and transferred.
- D. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. If a contribution is received unsolicited, the candidate or contributor may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. Nothing in this rule shall prohibit the use of direct mail or the internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection (C) of this Section, the residential address and signature of the solicitor is not required.
- E. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
1. Unsigned by the contributor;
  2. Undated; or
  3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- F. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.
- G. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the

amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.

- H. In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
  2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
  3. The period for filing qualifying contributions slips has not expired.
- I. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2). Subsection R2-20-105(C) amended by exempt rulemaking at 19 A.A.R. 1688, effective October 6, 2011; Subsection R2-20-105(J) amended by exempt rulemaking at 19 A.A.R. 1688, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 117, effective January 1, 2017 (Supp. 16-4).

**R2-20-106. Distribution of Funds to Certified Candidates**

- A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
    - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or

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- b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
  3. Determine whether the candidate is opposed in the election.
- B.** In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- C.** The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- D.** Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.
- E.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no expenditures from general election funds from the date of the canvass.
- F.** The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.
- G.** Pursuant to A.R.S. § 16-953, a participating candidate shall return to the Fund:
1. All primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.
  2. All general funds not committed to expenditures (1) during the general election period; and (2) for goods or services directed to the general election.
- H.** All funds returned to the Commission pursuant to subsection (G) of this rule, shall be returned to the Fund by a cashier's check drawn on the candidate's campaign bank account. Any fee associated with the issuance of a cashier's check shall be deemed a direct campaign expenditure and reported on the candidate's campaign finance report.
- I.** If a participating candidate does not account for any outstanding expenditures in the amount of the funds returned to the Commission, the participating candidate must reconcile the outstanding expenditures with personal monies. Once funds have been returned to the Commission, no further reimbursements from the Clean Elections Fund shall be permitted. Participating candidates may not exceed the primary or general election spending limits.
- J.** Commission staff may waive the return of funds if:
1. The Commission staff determines the amount to be returned is de minimus;
  2. The Commission staff determines the cost of recovery exceeds the amount of the return;
  3. The funds to be returned shall not exceed \$25; and
  4. The Commission is notified of any waiver of the return of funds.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by final exempt rulemaking at 24 A.A.R. 107, effective December 14, 2017 (Supp. 17-4).

**R2-20-107. Candidate Debates**

- A.** The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in the subsection below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.
- B.** In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:
1. There are more candidates appearing on the ballot than there are seats available for the political party's nomination for general election candidates, and
  2. At least one of the candidates is a participating candidate.
- C.** The following candidates will not be invited to participate in debates as follows:
1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election, write-in candidates.
- D.** In the event that there is no participating candidate in a primary or general election but there is an election involving candidates who are not unopposed, a candidate may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
1. A nonparticipating candidate who requests a debate pursuant to this rule shall complete and return the invitation form sent to the candidate by the Commission by the

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deadline identified on the form. Forms received by the Commission past the deadline may still be considered at the discretion of the Commission. Commission staff shall notify all invited candidates if a debate will be sponsored by the Commission and which candidates will participate.

2. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed \$10,000 for a non-participating candidate for the legislature and \$25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.
- E.** Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.
- F.** Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined \$500.00. For purposes of this Section, each primary or general election shall be considered a separate election.
- G.** A participating candidate may request to be exempt from participating in a required debate by doing the following:
1. Submit a written request to the Commission at least one week prior to the scheduled debate, and
  2. State the reasons and circumstances justifying the request for exemption.
- H.** After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
1. Beyond the control of the candidate; or
  2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- I.** A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.
1. The candidate's request for excused absence shall:
    - a. State the reason the candidate failed to participate in the debate, and
    - b. State the reason the candidate failed to request an exemption in advance, and
    - c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
  2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
    - a. Beyond the control of the candidate; or
    - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- J.** When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.
- K.** In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period

debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 1690, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 4213, effective November 21, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 21 A.A.R. 1627, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 119, effective December 15, 2016 (Supp. 16-4).

**R2-20-108. Termination of Participating Candidate Status**

- A.** A candidate may voluntarily request termination of his or her participating candidate status at any time prior to notification by the Commission that such candidate has qualified for Clean Elections funding. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action within the seven-day time period, the withdrawal is automatic.
- B.** A candidate's participating candidate status shall automatically terminate if:
1. The candidate fails to make such submissions to the Secretary of State as prescribed in R2-20-105(B) within seven days after the end of the qualifying period, or
  2. The candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with R2-20-105(G).
- C.** A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and (C).
- D.** In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original \$5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith attempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section

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repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 17 A.A.R. 1950, effective August 25, 2011 (Supp. 11-3).

**Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.**

**R2-20-109. Independent Expenditure Reporting Requirements**

- A.** In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:
1. Expressly provided otherwise by another Commission rule; or
  2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a suitable process.
- B.** Independent Expenditure Reporting Requirements.
1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
  2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-941(D) and -958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
    - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
    - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
    - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
  3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.

- b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
  - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
  - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
4. For purposes of A.A.C. R2-20-109(B)(3):
- a. An entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.
    - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
    - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
    - iii. For purposes of this provision, grants to other organizations shall be treated as follows:
      - (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
      - (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
    - iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable

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- contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
- v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
- (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
  - (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
- b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3). Subsection R2-20-109(D) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 29, 2015; subsection R2-20-109(F) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 30, 2015 (Supp. 15-4). Amended by exempt rulemaking at 22 A.A.R. 2892, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 121, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission adopted and unanimously voted to reenact and republish this Section that was "currently in effect" for

the purpose of public notice and clarity at 24 A.A.R. 109, effective December 14, 2017 (Supp. 17-4).

**R2-20-110. Participating Candidate Reporting Requirements**

- A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:
1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
  2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
  3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
    - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
    - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
    - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
  4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
    - a. Joint expenditures must be allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
    - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
    - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
    - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
    - e. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall

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be considered a joint expenditure including, but not limited to, the following criteria:

- i. The activity includes express advocacy of the election or defeat of more than 2 candidates;
- ii. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
- iii. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
- iv. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
- v. The timing of the material or activity in relation to the election of a second candidate;
- vi. The distribution of the material or the activity is targeted to a second candidate's electorate; or
- vii. The amount of control a second candidate has over the material or activity.

5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

**B. Timing of reporting expenditures.**

1. Except as set forth in subsection (A)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
2. In the alternative to reporting in accordance with subsection (A)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
  - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
  - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
  - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

**C. Reports and Refunds of Excess Monies by Participating Candidates.**

1. In addition to any campaign finance report required by Chapter 6 of Title 16, Arizona Revised Statutes, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
  - a. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a

campaign finance report with the names of the persons who have made qualifying contributions to the candidate.

- b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
  - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
  - ii. If the campaign finance report shows any amount of unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited in the Fund.
  - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
  - b. The campaign finance report for the general election shall be filed within five days after the general election day and shall reflect all activity through the general election day.
3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1629, effective July 23, 2015 (Supp. 15-3). Section R2-20-110 renumbered to Section R2-20-114; new Section R2-20-110 made by exempt rulemaking at 22 A.A.R. 2897, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 124, effective January 1, 2017 (Supp. 16-4).

*Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23*

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*A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.*

**R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits**

- A.** Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:
- B.** Penalties under A.R.S. § 16-942(B):
1. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  2. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  3. The penalties in (B)(1) and (B)(2) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
  4. The dollar amounts in items (B)(1) and (B)(2), and the spending limits in item (B)(3) are subject to adjustment of A.R.S. § 16-959.
- C.** Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.
- D.** Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).
- E.** The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.
- F.** Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final exempt rulemaking at 21 A.A.R. 1631, effective July 23, 2015 (Supp. 15-3). Section R2-20-111 renumbered to R2-20-115 at 22 A.A.R. 2904; new Section R2-20-111 made by exempt rulemaking at 22 A.A.R. 2899

effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 126, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission unanimously adopted and voted to reenact and republish this Section that was "currently in effect" for the purpose of public notice and clarity, with amendments at 24 A.A.R. 111, effective December 14, 2017 (Supp. 17-4).

**R2-20-112. Political Party Exceptions**

The provisions of A.R.S. § 16-911(B)(4) shall apply to a candidate, whether participating or nonparticipating, who becomes a nominee as defined in A.R.S. § 16-901(38).

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by final exempt rulemaking at 23 A.A.R. 128, effective January 1, 2017 (Supp. 16-4).

**R2-20-113. Candidate Statement Pamphlet**

- A.** The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. § 16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot. Statements submitted for the primary candidate statement pamphlet shall be used for the general candidate statement pamphlet unless otherwise stated by the candidate.
- B.** The following candidates will not be invited to submit a statement for the candidate statement pamphlet:
1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election: write in candidates.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 15 A.A.R. 1567, effective September 2, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1200, effective January 8, 2010 (Supp. 10-2). Repealed by exempt rulemaking at 19 A.A.R. 1694, effective October 6, 2011 (Supp. 13-2). New Section made by final exempt rulemaking at 21 A.A.R. 1633, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2118, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 335, effective February 4, 2020;

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amendments made to subsection (A) were originally codified in Supp. 19-3 at 25 A.A.R. 2118 (Supp. 20-1).

**R2-20-114. Candidate Campaign Bank Account**

- A. Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.
- B. A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.
- C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt-retirement contributions into the current election campaign bank account.

**Historical Note**

New Section R2-20-114 renumbered from R2-20-110 by exempt rulemaking at 22 A.A.R. 2897 and 22 A.A.R. 2902, effective January 1, 2017 (Supp. 16-3).

**R2-20-115. Books and Records Requirements**

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
  1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
    - a. All contributions or other monies received by or on behalf of the candidate.
    - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
    - c. Cumulative totals contributed by each individual or political committee.
    - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
    - e. All periodic bank statements or other statements for the candidate's campaign bank account.
    - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
  2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
  3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.

4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
  5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
  6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
  2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
  3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
  4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
    - a. All papers, records, or other items sought in the public inspection request;
    - b. No later than two business days after the date of the subpoena; and
    - c. To the Commission's office during regular business hours.
  5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

**Historical Note**

New Section R2-20-115 renumbered from R2-20-111 by exempt rulemaking at 22 A.A.R. 2899 and 22 A.A.R. 2904, effective January 1, 2017 (Supp. 16-3).

**ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES****R2-20-201. Scope**

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

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**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-202. Initiation of Compliance Matters**

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-203. Complaints**

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.
- B. A complaint shall conform to the following:
  1. Provide the full name and address of the complainant; and
  2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
  1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
  2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
  3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
  4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-204. Initial Complaint Processing; Notification**

- A. Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and provide each respondent a copy of the complaint.
- B. If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be provided with the notification to each respondent.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by final exempt rulemaking at 21 A.A.R. 1634, effective July 23, 2015 (Supp. 15-3).

**R2-20-205. Opportunity for No Action on Complaint-generated Matters**

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.
- C. The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1636, effective July 23, 2015 (Supp. 15-3).

**R2-20-206. Executive Director's Recommendation on Complaint-generated Matters**

- A. Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:
  1. May recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;
  2. May recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A); or
  3. May close the complaint generated matter without a reason to believe recommendation from the Executive Director based upon Respondent complying with the statute or rule on which the complaint is founded and in such case shall notify the Commission.
- B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.
- C. If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.
- D. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

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**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 20 A.A.R. 1332, effective May 22, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1638, effective July 23, 2015 (Supp. 15-3).

**R2-20-207. Internally Generated Matters; Referrals**

- A.** On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B.** If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-208. Complaint Processing; Notification**

- A.** If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B.** If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.
- C.** The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by

exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-209. Investigation**

- A.** The Executive Director or any other person designated by the Executive Director shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B.** The investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section amended by final rulemaking at 26 A.A.R. 111, with a immediate effective of December 12, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 542, effective March 9, 2020; the amendments to subsections (A) and (B) were originally codified in Supp. 19-4 at 26 A.A.R. 1111 (Supp. 20-1).

**R2-20-210. Written Questions Under Order**

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions**

- A.** The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B.** If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.
- C.** The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-212. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-213. Motions to Quash or Modify a Subpoena**

- A.** Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accom-

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panying such application with a brief statement of the reasons therefore.

- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures**

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-215. Probable Cause to Believe Finding**

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt

rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-216. Conciliation**

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least three members of the Commission.
- C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-217. Enforcement Proceedings**

- A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C. Subsections (A) and (B) of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection (B). Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-218. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-219. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section

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repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-220. Ex Parte Communications**

- A.** In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B.** This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.
- C.** Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-221. Representation by Counsel; Notification**

- A.** If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:
1. The name, address, and telephone number of the counsel; and
  2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.
- B.** Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-222. Civil Penalties**

- A.** If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed \$1,000 for a participating candidate for the legislature and 5,000 for a participating candidate for statewide office.
- B.** If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate

is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed \$1,000.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1697, effective May 23, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3524, effective September 27, 2013 (Supp. 13-4).

**R2-20-223. Notice of Appealable Agency Action**

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated and specific facts constituting the violation;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 2921, effective July 1, 2011; filed in the Office October 27, 2015 (Supp. 15-4).

**R2-20-224. Request for an Administrative Hearing**

- A.** The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.
- B.** If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.
- C.** The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless and expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

**R2-20-225. Informal Settlement Conference**

- A.** If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.
- B.** The Commission representative shall notify the appellant in writing that the statements, either written or oral, made by the

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appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-226. Administrative Hearing**

- A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.
- B. If the enforcement action occurs within six months of the primary or general election, the Commission will request an expedited review of the matter

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-227. Review of Administrative Decision by Commission**

- A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.
- B. If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C. If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-228. Judicial Review**

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-229. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-230. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-231. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES****R2-20-301. Purpose and Applicability**

- A. The Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.
- B. This Article applies to all persons included within the terms "employee" and "Commissioner" of the Commission.
- C. These Standards of Conduct shall be construed in accordance with any applicable laws, regulations, and agreements between the Commission and a labor organization.
- D. Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-302. Definitions**

The following terms apply in all Citizens Clean Elections Act matters:

1. "Commission" means the Citizens Clean Elections Commission of Arizona.
2. "Commissioner" means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
3. "Conflict of interest" means a situation in which a Commissioner's or an employee's private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
4. "Employee" means an employee or staff member of the Commission.
5. "Former employee" means one who was, and is no longer, an employee of the Commission.
6. "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.

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7. "Outside employment" or "outside activity" means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner's or employee's official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
8. "Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-303. Notification to Commissioners and Employees**

The Executive Director shall provide to each Commissioner and employee of the Commission, upon commencement of his or her term or employment and at least annually thereafter, a copy of this Article and such other information regarding standards of conduct as the Commission and/or applicable law may prescribe.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

**R2-20-304. Interpretation and Advisory Service**

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article shall consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

**R2-20-305. Reporting Suspected Violations**

- A.** Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.
- B.** When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-306. Disciplinary and Other Remedial Action**

- A.** A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.
- B.** When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminat-

ing the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

- C.** Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
1. Changes in assigned duties;
  2. Divestment by the employee of his or her conflicting interest;
  3. Disqualification for particular action; or
  4. Disciplinary action.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-307. General Prohibited Conduct**

- A.** A Commissioner or employee shall avoid any action whether or not specifically prohibited by this Section that might result in, or create the appearance of:
1. Using public office for unlawful private gain;
  2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
  3. Impeding Commission efficiency or economy;
  4. Losing impartiality.
  5. Making a Commission decision without Commission approval; or
  6. Adversely affecting the confidence of the public in the integrity of the Commission.
- B.** A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
  2. Conducts operations or activities that are regulated or examined by the Commission; or
  3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.
- C.** Subsection (B) of this Section shall not apply in the following circumstances:
1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
  2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
  3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
  4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- D.** A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a spe-

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cial occasion such as birthday, holiday, marriage, illness, or retirement.

- E. This Section does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this Section does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-308. Outside Employment or Activities**

- A. A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.
- B. Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
1. Outside employment or other activities that involve illegal activities;
  2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
  3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
  4. Outside employment or other activities that might bring discredit upon the state or Commission;
  5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
  6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
  7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
  8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
  9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
  10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However,

written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

- C. Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.
- D. Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.
- E. This Section does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service, or civic organization.
- F. An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing, or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-309. Financial Interests**

- A. Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.
- B. Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.
- C. Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has

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any other interest that could be substantially affected by the outcome of the proceeding.

- D.** This Section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-310. Political and Organization Activity**

- A.** Due to the Commission's role in the political process, the following restrictions on political activities are required:
1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
  2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party, or political committee subject to the jurisdiction of the Commission; and
  3. Commissioners and employees shall not display partisan buttons, badges, or other insignia on Commission premises.
- B.** Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this Section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.
- C.** A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-311. Membership in Associations**

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-312. Use of State Property**

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 4. AUDITS**

**R2-20-401. Purpose and Scope**

This article prescribes procedures for conducting examinations and audits of participating candidates' campaign finances.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 19 A.A.R. 1699, effective October 6, 2011 (Supp. 13-2).

**R2-20-402. General**

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-402.01. Audits of Participating Legislative Candidates**

To ensure compliance with the Act and Commission rules, the Commission shall conduct audits of all participating legislative candidates after each election. Candidates who win their primary election will not be subject to an audit until after the general election. Audits shall include the review of campaign finance reports for the entire election cycle and related documentation in accordance with procedures established by the Commission. The Commission may hire independent accounting firms to carry out the audits.

**Historical Note**

New Section made by exempt rulemaking at 13 A.A.R. 3529, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1700, effective October 6, 2011 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1640, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 130, effective December 15, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 2944, effective September 28, 2017 (Supp. 17-4).

**R2-20-402.02. Audits of Participating Statewide Candidates**

All participating statewide candidates shall be audited after each primary election period and each general election period.

**Historical Note**

New Section made by final exempt rulemaking at 23 A.A.R. 131, effective December 15, 2016 (Supp. 16-4).

**R2-20-403. Conduct of Fieldwork**

- A.** The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the addi-

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tional or updated information no later than two days after service of the Commission's request.

- B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.
- C. If the candidate fails to provide adequate office space, personnel or records, the Commission may seek judicial intervention to enforce the request or assess other penalties.
- D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-404. Preliminary Audit Report**

- A. After the completion of fieldwork, the auditors may prepare a written preliminary audit report, which will be provided to the candidate after it is reviewed by the Executive Director. The preliminary audit report may include:
  1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules,
  2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate, and
  3. Preliminary findings.
- B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.
- C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2).

**R2-20-405. Final Audit Report**

- A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.
- B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.
- C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set

forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-406. Release of Audit Report**

- A. The Commission will consider the final audit report specified in R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.
- B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within five days after the public meeting.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**ARTICLE 5. RULEMAKING****R2-20-501. Purpose and Scope**

This Article prescribes the procedures for the submission, consideration, and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-502. Procedural Requirements**

- A. Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.
- B. The petition shall:
  1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
  2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
  3. Identify the specific Section of the regulations to be affected;
  4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
  5. Be addressed and submitted to the Commission.
- C. The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- D. The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection (B) of this Section as a basis for rulemaking addressing issues raised in a petition.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-503. Processing of Petitions**

- A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should be initiated, the Commission may publish a Notice of Avail-

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ability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.

- B. If the Commission decides a public hearing on the petition would help determine whether to commence a rulemaking proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.
- C. The Commission will consider all comments regarding whether rulemaking proceedings should be initiated.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-504. Disposition of Petitions**

- A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate rulemaking based on the filed petition.
- B. If the Commission decides to initiate rulemaking proceedings, it shall file a Notice of Proposed Rulemaking and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Administrative Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.
- C. If the Commission decides not to initiate rulemaking, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-505. Commission Considerations**

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations:

1. The Commission's statutory authority;
2. Policy considerations;
3. The desirability of proceeding on a case-by-case basis;
4. The necessity or desirability of statutory revision;
5. Available agency resources; and
6. Substantive policy statements.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-506. Administrative Record**

- A. The Commission record for the petition process consists of the following:
  1. The petition, including all attachments on which it relies, filed by the petitioner;
  2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
  3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;

4. All notices published on the Commission web site and in the Arizona Administrative Register, including the Notice of Availability and Notice of Disposition;
  5. The transcripts or audiotapes of any public hearing on the petition;
  6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
  7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.
- B. The administrative record specified in subsection (A) of this Section is the exclusive record for the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 6. EX PARTE COMMUNICATIONS****R2-20-601. Purpose and Scope**

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at R2-20-220.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-602. Definitions**

- A. "Ex parte communication" means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
  1. Any ongoing audit;
  2. Any pending investigation; or
  3. Any litigation matter.
- B. "Ex parte communication" does not include the following communications:
  1. Public statements by any person in a public forum; or
  2. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-603. Audits, Investigations, and Litigation**

- A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or any other decision concerning an investigation or litigation matter.
- B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection (A) of this Section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication,

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and deliver the statement to the Executive Director for placement in the applicable case file.

- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-604. Sanctions**

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 7. USE OF FUNDS AND REPAYMENT****R2-20-701. Purpose and Scope**

Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment 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, nor make any payment directly or indirectly to a political party; and subject to the foregoing, may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final rulemaking at 26 A.A.R. 886, with an immediate effective date of February 27, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1259, with an immediate effective date of June 4, 2020 (Supp. 20-2).

**R2-20-702. Use of Campaign Funds**

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.

- C. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The sum of early contributions received plus public funds disbursed through the primary election period; less
  2. All other expenditures made during and for the exploratory, qualifying and primary election periods.
- D. During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The amount of public funds disbursed during and for the general election period; less
  2. All other expenditures made during and for the general election period.
- E. Transportation expenses.
1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
    - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
  3. Use of airplanes.
    - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
    - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.

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4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and (ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 22 A.A.R. 2906, effective January 1, 2017 (Supp. 16-3). Amended by exempt rulemaking at 23 A.A.R. 2342, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2120, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 309, with an immediate effective date of January 23, 2020 (Supp. 20-1). Amended by final rulemaking at 26 A.A.R. 1132, with an immediate effective date of May 11, 2020 (Supp. 20-2).

**R2-20-702.01. Use of Assets**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate. Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment 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, nor make any payment directly or indirectly to a political party.

**Historical Note**

New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 887, with an immediate effective date of March 9, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1261, with an immediate effective date of June 4, 2020 (Supp. 20-2).

**R2-20-703. Documentation for Direct Campaign Expenditures**

- A. In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
  2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
  3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fundraising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- C. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by final exempt rulemaking at 21 A.A.R. 1641, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 133, effective January 1, 2017 (Supp. 16-4).

**R2-20-703.01. Campaign Consultants**

- A. For purposes of this rule "Campaign Consultant" means any person paid by a participating candidate's campaign or who provides services that are ordinarily charged to a person, except services provided for in A.R.S. § 16-911(6)(b).
- B. A participating candidate may engage campaign consultants.
- C. A participating candidate may only advance a campaign consultant for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign service if an itemized invoice identifying the value of the services is provided directly to that particular candidate at the time of the advance payment.
1. Providing payment for such services as described in subsection (C) of this rule in the absence of an itemized invoice or advance payment for such services shall be deemed not to be a direct campaign expenditure.

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2. A participating candidate may advance payment for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of postage.
  3. A participating candidate may advance payment for advertising that customarily requires pre-payment upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.
- D.** The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source, showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after the mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.
- E.** Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment 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, nor make any payment directly or indirectly to a political party.

**Historical Note**

New Section made by exempt rulemaking at 23 A.A.R. 2344, effective July 20, 2017 (Supp. 17-3). Amended by final rulemaking at 26 A.A.R. 889, with an immediate effective date of March 16, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1263, with an immediate effective date of June 4, 2020 (Supp. 20-2).

**R2-20-704. Repayment**

- A.** In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
  2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible.
  3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
  4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.
  5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B.** The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
  2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
  3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
  4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
  5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.
  6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C.** Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
  2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D.** Repayment period.
1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
  2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon appli-

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cation by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.

3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:
  - a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
  - b. The amount actually earned on the funds set aside or to be repaid under this Section.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1643, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2122, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 337, effective February 4, 2020; the amendment to subsection (A)(2) was originally codified in Supp. 19-3 at 25 A.A.R. 2020 (Supp. 20-1).

**R2-20-705. Additional Audits or Repayment Determinations**

- A. The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section

repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-706. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-707. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-708. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-709. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-710. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

## 16-940. Findings and declarations

(Caution: 1998 Prop. 105 applies)

A. The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

B. The people of Arizona find that our current election-financing system:

1. Allows Arizona elected officials to accept large campaign contributions from private interests over which they have governmental jurisdiction;
2. Gives incumbents an unhealthy advantage over challengers;
3. Hinders communication to voters by many qualified candidates;
4. Effectively suppresses the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests;
5. Undermines public confidence in the integrity of public officials;
6. Costs average taxpayers millions of dollars in the form of subsidies and special privileges for campaign contributors;
7. Drives up the cost of running for state office, discouraging otherwise qualified candidates who lack personal wealth or access to special-interest funding; and
8. Requires that elected officials spend too much of their time raising funds rather than representing the public.

16-941. Limits on spending and contributions for political campaigns

(Caution: 1998 Prop 105 applies)

A. Notwithstanding any law to the contrary, a participating candidate:

1. Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945, except in the emergency situation specified in section 16-954, subsection F.
2. Shall not make expenditures of more than a total of five hundred dollars of the candidate's personal monies for a candidate for the legislature or more than one thousand dollars for a candidate for statewide office.
3. Shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.
4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.
5. Shall comply with section 16-948 regarding campaign accounts and section 16-953 regarding returning unused monies to the citizens clean elections fund described in this article.

B. Notwithstanding any law to the contrary, a nonparticipating candidate shall not accept contributions in excess of an amount that is twenty per cent less than the limits specified in section 16-905, subsections A through E, as adjusted by the secretary of state pursuant to section 16-905, subsection H. Any violation of this subsection shall be subject to the civil penalties and procedures set forth in section 16-905, subsections J through M and section 16-924.

C. Notwithstanding any law to the contrary, a candidate, whether participating or nonparticipating:

1. If specified in a written agreement signed by the candidate and one or more opposing candidates and filed with the citizens clean elections commission, shall not make any expenditure in the primary or general election period exceeding an agreed-upon amount lower than spending limits otherwise applicable by statute.
2. Shall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.

D. Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

## 16-952. One-party-dominant legislative district

(Caution: 1998 Prop 105 applies)

Upon applying for clean elections funding pursuant to section 16-950, a participating candidate for the legislature in a one-party-dominant legislative district who is qualified for clean elections funding for the party primary election of the dominant party may choose to reallocate a portion of funds from the general election period to the primary election period. At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of a participating candidate who makes this choice an extra amount equal to fifty per cent of the original primary election spending limit, and the original primary election spending limit for the candidate who makes this choice shall be increased by the extra amount. If a participating candidate who makes this choice becomes qualified for clean elections funding for the general election, the amount the candidate receives at the beginning of the general election period shall be reduced by the extra amount received at the beginning of the primary election period, and the original general election spending limit for that candidate shall be reduced by the extra amount. For the purpose of this subsection, a one-party-dominant legislative district is a district in which the number of registered voters registered in the party with the highest number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as ten per cent of the total number of voters registered in the district. The status of a district as a one-party-dominant legislative district shall be determined as of the beginning of the qualifying period.

## 16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

## 16-957. Enforcement procedure

(Caution: 1998 Prop. 105 applies)

A. If the commission finds that there is reason to believe that a person has violated any provision of this article, the commission shall serve on that person an order stating with reasonable particularity the nature of the violation and requiring compliance within fourteen days. During that period, the alleged violator may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission.

B. Upon expiration of the fourteen days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with section 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. The violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in title 12, chapter 7, article 6.

C. Any candidate in a particular election contest who believes that any opposing candidate has violated this article for that election may file a complaint with the commission requesting that action be taken pursuant to this section. If the commission fails to make a finding under subsection A of this section within thirty days after the filing of such a complaint, the candidate may bring a civil action in the superior court to impose the civil penalties prescribed in this section.

## 16-958. Manner of filing reports

(Caution: 1998 Prop 105 applies)

A. Any person who has previously reached the dollar amount specified in section 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars. Such reports shall be filed at the times specified in subsection B of this section and shall identify the dollar amount being reported, the candidate and the date, and no other detail is required in reports made pursuant to this section.

B. Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:

1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report within one business day of reaching the dollar amount for filing an original or supplemental report.

C. Any filing under this article on behalf of a candidate may be made by the candidate's campaign committee. All candidates shall deposit any check received by and intended for the campaign and made payable to the candidate or the candidate's campaign committee, and all cash received by and intended for the campaign, in the candidate's campaign account before the due date of the next report specified in subsection B of this section. No candidate or person acting on behalf of a candidate shall conspire with a donor to postpone delivery of a donation to the campaign for the purpose of postponing the reporting of the donation in any subsequent report.

D. The secretary of state shall immediately notify the commission of the filing of each report under this section and deliver a copy of the report to the commission, and the commission shall promptly mail or otherwise deliver a copy of each report filed pursuant to this section to all participating candidates opposing the candidate identified in section 16-941, subsection D.

E. Any report filed pursuant to this section or section 16-916, subsection A, paragraph 1 or subsection B shall be filed in electronic format. The secretary of state shall distribute computer software to political committees to accommodate such electronic filing.

F. During the primary election period and the general election period, all candidates shall make available for public inspection all bank accounts, campaign finance reports and financial records relating to the candidate's campaign, either by immediate disclosure through electronic means or at the candidate's campaign headquarters, in accordance with rules adopted by the commission.

## 16-961. Definitions

(Caution: 1998 Prop 105 applies)

A. The terms "candidate's campaign committee," "contribution," "expenditures," "exploratory committee," "independent expenditure," "personal monies," "political committee" and "statewide office" are defined in section 16-901.

B. 1. "Election cycle" means the period between successive general elections for a particular office.

2. "Exploratory period" means the period beginning on the day after a general election and ending the day before the start of the qualifying period.

3. "Qualifying period" means the period beginning on the first day of August in a year preceding an election and ending one week before the primary election.

4. "Primary election period" means the nine-week period ending on the day of the primary election.

5. "General election period" means the period beginning on the day after the primary election and ending on the day of the general election.

6. For any recall election, the qualifying period shall begin when the election is called and last for thirty days, there shall be no primary election period and the general election period shall extend from the day after the end of the qualifying period to the day of the recall election. For recall elections, any reference to "general election" in this article shall be treated as if referring to the recall election.

C. 1. "Participating candidate" means a candidate who becomes certified as a participating candidate pursuant to section 16-947.

2. "Nonparticipating candidate" means a candidate who does not become certified as a participating candidate pursuant to section 16-947.

3. Any limitation of this article that is applicable to a participating candidate or a nonparticipating candidate shall also apply to that candidate's campaign committee or exploratory committee.

D. "Commission" means the citizens clean elections commission established pursuant to section 16-955.

E. "Fund" means the citizens clean elections fund defined by this article.

F. 1. "Party nominee" means a person who has been nominated by a political party pursuant to section 16-301 or 16-343.

2. "Independent candidate" means a candidate who has properly filed nominating papers and nominating petitions with signatures pursuant to section 16-341.

3. "Unopposed" means with reference to an election for:

(a) A member of the house of representatives, opposed by no more than one other candidate who has qualified for the ballot and who is running in the same district.

(b) A member of the corporation commission, opposed by a number of candidates who have qualified for the ballot that is fewer than the number of corporation commission seats open at that election and for which the term

of office ends on the same date.

(c) All other offices, opposed by no other candidate who has qualified for the ballot and who is running in that district or running for that same office and term.

G. "Primary election spending limits" means:

1. For a candidate for the legislature, twelve thousand nine hundred twenty-one dollars.
2. For a candidate for mine inspector, forty-one thousand three hundred forty-nine dollars.
3. For a candidate for treasurer, superintendent of public instruction or the corporation commission, eighty-two thousand six hundred eighty dollars.
4. For a candidate for secretary of state or attorney general, one hundred sixty-five thousand three hundred seventy-eight dollars.
5. For a candidate for governor, six hundred thirty-eight thousand two hundred twenty-two dollars.

H. "General election spending limits" means amounts fifty per cent greater than the amounts specified in subsection G of this section.

I. 1. "Original" spending limit means a limit specified in subsections G and H of this section, as adjusted pursuant to section 16-959, or a special amount expressly set for a particular candidate by a provision of this title.

2. "Adjusted" spending limit means an original spending limit as further adjusted pursuant to section 16-952.



Cited

As of: August 20, 2021 5:00 PM Z

## [Ariz. Advocacy Network Found. v. State](#)

Court of Appeals of Arizona, Division One

September 29, 2020, Filed

No. 1 CA-CV 19-0489

### Reporter

475 P.3d 1149 \*; 2020 Ariz. App. LEXIS 745 \*\*; 2020 WL 5793080

THE ARIZONA ADVOCACY NETWORK FOUNDATION, et al., Plaintiffs/Appellees, v. STATE OF ARIZONA, et al., Defendants/Appellants.

**Prior History:** [\*\*1] Appeal from the Superior Court in Maricopa County. No. CV2017-096705. The Honorable David J. Palmer, Judge.

**Disposition:** AFFIRMED IN PART; VACATED AND REMANDED IN PART.

### Core Terms

candidates, expenditures, definitions, election, limits, entities, voters, political committee, primary purpose, superior court, terms, exemption, campaign-finance, contributions, formula, The Act, articles, violates, political action committee, participating, variables, campaign, campaign finance, influencing, enjoined, changes, repeal, canon, public official, nonparticipating

### Case Summary

#### Overview

**HOLDINGS:** [1]-In voting commission's action challenging SB1516's amendments to the definitions of "contribution" and "expenditures," under [Ariz. Rev. Stat. §§ 16-911.B.4\(b\)](#), [16-911.B.6\(c\)](#), [16-921.B.4\(c\)](#), [16-921.B.7](#), on the ground that those terms were Voter Protection Act (VPA)-protected, the court held that the Citizens Clean Elections Act (CCEA) did not permanently establish or fix those definitions, and that the superior court, therefore, erred when it enjoined those amendments; [2]-SB1516's new definition of the term "primary purpose" under [Ariz. Rev. Stat. § 16-901\(43\)](#) did not run afoul of the VPA because the new definition neither directly nor indirectly impacted the substance of the CCEA; [3]-Because the "sole public officer" limitation that SB1516 added to [Ariz. Rev. Stat.](#)

[§ 16-938.A](#) limited the commission's investigative authority under the CCEA, it violated the VPA.

### Outcome

Judgment affirmed in part; vacated and remanded in part.

### LexisNexis® Headnotes

Governments > State & Territorial  
Governments > Elections

#### [HN1](#) [↓] **State & Territorial Governments, Elections**

SB1516's amendments to the definitions of "contribution" and "expenditures" did not violate the Voter Protection Act because the Citizens Clean Election Act does not permanently establish or fix the definitions of "contribution" and "expenditures."

Governments > State & Territorial  
Governments > Elections

#### [HN2](#) [↓] **State & Territorial Governments, Elections**

SB1516's new definition of the term "primary purpose" effectively immunizing tax-exempt entities from some registration and reporting requirements, [Ariz. Rev. Stat. §§ 16-901\(43\)](#) and [16-905\(D\)](#), neither directly nor indirectly impacted the substance of the Citizens Clean Election Act, and did not run afoul of the Voter Protection Act.

Governments > State & Territorial  
Governments > Elections

**[HN3](#)  State & Territorial Governments, Elections**

Because the "sole public officer" limitation that SB1516 added to [Ariz. Rev. Stat. § 16-938](#).A limited the Citizens Clean Election Commission's investigative authority under the Citizens Clean Election Act, it violates the Voter Protection Act.

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > Inferences & Presumptions

Evidence > Burdens of Proof > Allocation

Governments > Legislation > Interpretation

**[HN4](#)  Constitutionality of Legislation, Inferences & Presumptions**

An appellate court reviews the constitutionality and interpretation of statutes de novo. When the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, the court presumes the statute is constitutional and will uphold it unless it clearly is not. The party challenging the statute bears the burden of proving its unconstitutionality.

Governments > Legislation > Interpretation

**[HN5](#)  Legislation, Interpretation**

The primary objective in interpreting a voter-enacted law is to effectuate the voters' intent. If the statute's language is clear and unambiguous, courts must give effect to that language without employing other rules of statutory construction. If the language, however, is ambiguous, courts look to the rules of statutory construction and consider the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose.

Governments > State & Territorial Governments > Elections

**[HN6](#)  State & Territorial Governments, Elections**

A formula is a set form of words for indicating procedure to be followed. A formula typically will specify how certain variables must be treated. A variable is

something that may or does vary; a variable feature or factor. It comes from the verb, to vary, which means to change or alter, as in form, appearance, character, or substance. Variables referenced in a formula in a Voter Protection Act(VPA)-protected statute do not enjoy VPA protections unless they also are specifically defined within a Voter Protection Act protected statute.

Governments > State & Territorial Governments > Elections

**[HN7](#)  State & Territorial Governments, Elections**

The definitions of "contribution" and "expenditures" are variables in the Citizens Clean Elections Act's formula for calculating total contributions and total expenditures. Assistance in the form of a contribution is subject to the contribution limits, but assistance in a form that does not constitute a contribution is not. Expenditures work the same way. And nothing in SB1516 changes those formulas.

Governments > State & Territorial Governments > Elections

**[HN8](#)  State & Territorial Governments, Elections**

No sound reason exists to conclude that voters intended to establish fixed definitions in [Ariz. Rev. Stat. § 16-961](#).A by using a reference to another, existing statute, [Ariz. Rev. Stat. § 16-901](#).

Governments > Legislation > Interpretation

**[HN9](#)  Legislation, Interpretation**

Specific reference is a statutory construction canon providing that when a statute adopts another statute by specific reference, the adopted statute is taken as it then exists and does not include subsequent amendments, unless the enactors of the adopting statute expressly intended otherwise.

Governments > State & Territorial Governments > Elections

**[HN10](#)  State & Territorial Governments, Elections**

Though the Citizens Clean Elections Act imposes a handful of reporting requirements, nothing about the term "primary purpose," or SB1516's definition of it, changes the reports a person or entity—political action committee or not—must file under the Act. Simply stated, the registration and reporting requirements outside of article 2 are not Voter Protection Act protected.

Governments > State & Territorial  
Governments > Elections

#### [HN11](#) **State & Territorial Governments, Elections**

Under SB1516, "a political action committee" is an entity organized for the primary purpose of influencing the result of an election. [Ariz. Rev. Stat. § 16-905.C](#). Therefore, entities whose primary purpose is not to influence an election will not need to register or file reports.

Governments > State & Territorial  
Governments > Elections

#### [HN12](#) **State & Territorial Governments, Elections**

If a nonparticipating candidate receives a contribution from an entity that is not required to register as a political action committee, the candidate still must report the contribution. [Ariz. Rev. Stat. § 16-926](#). Indeed, participating candidates generally cannot even accept such a contribution. [Ariz. Rev. Stat. §§ 16-945, 16-946](#). And if the entity makes an independent expenditure, it must file reports under the Citizens Clean Elections Act, whether or not it is a registered political action committee. [Ariz. Rev. Stat. § 16-941.D](#). For these reasons, the term "primary purpose" in SB1516 and the related exemption for tax-exempt entities do not run afoul of the Voter Protection Act.

Governments > Legislation > Interpretation

#### [HN13](#) **Legislation, Interpretation**

When interpreting a statute, a court strives to give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial.

Administrative Law > Separation of  
Powers > Legislative Controls > Scope of Delegated  
Authority

Governments > State & Territorial  
Governments > Elections

#### [HN14](#) **Legislative Controls, Scope of Delegated Authority**

The Citizens Clean Elections Commission, as an administrative agency, has the power authorized by the express provisions of its enabling statutes. Because the Commission's investigatory authority comes from the Citizens Clean Elections Act, the legislature may not limit that authority unless it complies with the Voter Protection Act.

Governments > State & Territorial  
Governments > Elections

#### [HN15](#) **State & Territorial Governments, Elections**

Under the Citizens Clean Elections Act's express language, the Citizens Clean Elections Commission has broad enforcement authority. To that end, the Act expressly authorizes the Commission to investigate: 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. [Ariz. Rev. Stat. § 16-956.B](#).

Governments > State & Territorial  
Governments > Elections

#### [HN16](#) **State & Territorial Governments, Elections**

Not only may the Citizens Clean Elections Commission act in furtherance of its powers sua sponte, the Citizens Clean Elections Act expressly contemplates the Commission receiving—and acting upon—third-party complaints about violations within its purview. [Ariz. Rev. Stat. § 16-956.A.7](#).

**Counsel:** Torres Law Group, PLLC, Tempe, By Israel G. Torres, James E. Barton II, Jacqueline Mendez Soto, Counsel for Plaintiffs/Appellees Arizona Advocacy

Network Foundation.

Osborn Maledon, P.A., Phoenix, By Mary R. O'Grady,  
Joseph N. Roth, Counsel for  
Defendant/Appellee Citizens Clean Elections  
Commission.

Fennimore Craig, P.C., Phoenix, By Timothy J. Berg,  
Emily Ward, Brett Gilmore, Counsel for  
Defendant/Appellant State of Arizona.

Institute for Justice, Tempe, By Paul V. Avelar, Counsel  
for Amicus Curiae.

**Judges:** Judge David B. Gass delivered the opinion of  
the Court, in which Presiding Judge Lawrence F.  
Winthrop and Judge Maria Elena Cruz joined.

**Opinion by:** David B. Gass

## Opinion

[\*1151] **GASS**, Judge:

P1 This opinion addresses the application of Arizona's  
Voter Protection Act (the VPA) to the voter-approved  
[Citizens Clean Elections Act](#) (the Act). In 2016, Senate  
Bill 1516 (SB1516) made comprehensive changes to  
Arizona's campaign-finance laws. See 2016 Ariz. Sess.  
Laws, ch. 79 (2d Reg. Sess.). Though SB1516 made no  
changes to the Act itself, at issue is whether some of  
SB1516's provisions [\*2] nonetheless violate the VPA.

P2 Arizona Advocacy Network (AAN) and the Citizens  
Clean Election Commission (collectively, appellees)  
challenge some of SB1516's amendments to the  
definitions of "contribution" and "expenditures," arguing  
those terms are VPA-protected. Applying the analysis in  
[Arizona Citizens Clean Elections Commission v. Brain](#),  
[234 Ariz. 322, 322 P.3d 139 \(2014\)](#), we hold [HN1](#) [↑]  
the Act does not permanently establish or fix those  
definitions. The superior court, therefore, erred when it  
enjoined those amendments.

P3 Citing [State v. Maestas](#), [244 Ariz. 9, 417 P.3d 774](#)  
[\(2018\)](#) [HN2](#) [↑], appellees also challenge SB1516's new  
definition of the term "primary purpose." The new  
definition effectively immunizes tax-exempt entities from  
some registration and reporting requirements. Appellees  
argue the new definition indirectly amends or  
undermines the purpose of the Act. Because the new  
definition neither directly nor indirectly impacts the  
substance of the Act, it does not run afoul of the VPA.

The superior court, therefore, erred when it enjoined  
[A.R.S. §§ 16-901\(43\)](#) and [-905\(D\)](#).<sup>1</sup>

[HN3](#) [↑] P4 Finally, appellees challenge the "sole public  
officer" limitation that SB1516 added to [subsection 16-938.A](#). Because this provision limits the Citizens Clean  
Election Commission's investigative authority under the  
Act, it violates the VPA. The superior court, therefore,  
did [\*3] not err when it enjoined this language as to the  
Commission only.

P5 Accordingly, we affirm in part, vacate in part, and  
remand for the superior court to redetermine its award  
of attorney fees and costs consistent with this opinion.

## FACTUAL HISTORY

P6 The Act, a 1998 voter initiative, "established an  
alternative campaign financing system for primary and  
general elections and created [the Commission] to  
administer it." [Brain](#), [234 Ariz. at 323, ¶ 3](#). With one  
exception, the Act is codified as title 16, chapter 6,  
article 2. See [A.R.S. §§ 16-940 to -961](#). [\*1152] The  
Act also added a section to chapter 6, article 1 defining  
the term "expressly advocates." See [A.R.S. § 16-901.01](#). Until SB1516's enactment, Arizona's other  
campaign-finance laws were contained in chapter 6,  
article 1.

P7 The VPA, a separate voter initiative, also passed in  
1998. The VPA amended Arizona's Constitution to  
"limit[] the legislature's authority to modify laws enacted  
by voters at or after the November 1998 general  
election." See [Brain](#), [234 Ariz. at 323, ¶ 4](#) (citations  
omitted). The VPA applies to the Act. See *id.*  
Specifically, the VPA eliminated the legislature's  
authority to repeal a voter-approved law. See Ariz.  
Const. art. 4, pt. 1, § 1(6)(B). The VPA also prohibits the  
legislature from amending or superseding a voter-  
approved law unless [\*4] the proposed legislation (1)  
"furthers the purposes" of the voter-approved law and  
(2) is approved by "at least three-fourths of the  
members of each house of the legislature." See *id.* §  
1(6)(C), (14).

P8 Before SB1516 was enacted, title 16, chapter 6,  
article 1 consisted of [sections 16-901 through 16-925](#).  
Except for [§ 16-901.01](#), SB1516 entirely repealed the  
existing article 1, replacing and reorganizing it with

<sup>1</sup> Statutes cited refer to the current version unless otherwise  
indicated.

articles 1 through 1.7.<sup>2</sup> See 2016 Ariz. Sess. Laws, ch. 79, §§ 10-12 (2d Reg. Sess.). The current articles 1 through 1.7 consist of [sections 16-901 through 16-938](#).

P9 The first issue involves the terms "contribution" and "expenditures." Though the Act uses those terms, it does not explicitly define them. Instead, it states both terms "are defined in [section 16-901](#)." See [A.R.S. § 16-961\(A\)](#).

P10 When the Act passed, [§ 16-901](#) defined "contribution" and "expenditures" by specifying categories of items included in, and exempted from, each definition. See [A.R.S. § 16-901\(5\)](#), [\(8\)](#) (1998). SB1516 left the definitions in [§ 16-901](#) but relocated and expanded the related exemptions. See [A.R.S. §§ 16-901\(11\)](#) (defining "contribution"), [-911](#) (exemptions from definition of "contribution"), [-901\(25\)](#) (defining "expenditure"), [-922](#) (exemptions from definition of "expenditure"). As relevant here, because of SB1516's changes, "payment by a political party to support its nominee, **[\*\*5]** including . . . [c]oordinated party expenditures," and payment "of a committee's legal or accounting expenses" are no longer "contribution[s]." See [A.R.S. § 16-911.B.4\(b\)](#), [.B.6\(c\)](#). Similarly, payment "of a committee's legal or accounting expenses" or "for legal or accounting services that are provided to a committee" are no longer "expenditures." See [A.R.S. § 16-921.B.4\(c\)](#), [.B.7](#).

P11 The second issue involves the term "primary purpose." SB1516 defines "primary purpose" as "an entity's predominant purpose." See [A.R.S. § 16-901\(43\)](#). The definition further provides that entities with a fully compliant "tax exempt status under section 501(a) of the internal revenue code" are "not organized for the primary purpose of influencing an election." See *id.* Appellees challenge the new definition because it insulates some pre-SB1516 "political committees" from certain campaign-finance registration and reporting requirements. Appellees also challenge the related [subsection 16-905.D](#), which provides an entity without fully compliant tax-exempt status faces "a rebuttable presumption [it] is organized for the primary purpose of influencing the result of an election."

P12 Appellees' challenge relates to SB1516's repeal of the term "political committee" from [§ 16-901](#). The **[\*\*6]**

Act references that definition in subsection [16-961.A](#). In 1998, [§ 16-901](#) defined "political committee," in part, as:

a candidate or any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election . . . notwithstanding that the association or combination of persons may be part of a larger association, combination of persons or sponsoring organization not primarily organized, conducted or combined for the purpose of influencing the result of any **[\*1153]** election in this state or in any county, city, town or precinct in this state.

[A.R.S. § 16-901\(19\)](#) (1998).

P13 SB1516 repealed the definition of "political committee" and created a similar term, "committee." Under SB1516, "committee" means "a candidate committee, a political action committee or a political party." [A.R.S. § 16-901\(10\)](#). SB1516 in turn defines "political action committee" as an entity "organized for the primary purpose of influencing the result of an election" that "knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election during a calendar year." [A.R.S. § 16-905.C](#) (emphasis added); see also [A.R.S. § 16-901\(41\)](#) (defining "political action committee" as **[\*\*7]** an entity required to register under [§ 16-905.C](#)). Importantly, appellees do not challenge, and the superior court did not enjoin, [§ 16-905.C](#)'s definition of "political action committee" or its use of "primary purpose."

P14 The third issue involves the phrase "sole public officer." SB1516 revised and renumbered the investigation and enforcement provisions of the previous article 1—now articles 1 through 1.7. SB1516 specified that "a filing officer is *the sole public officer* who is authorized to initiate an investigation into alleged violations of" articles 1 through 1.7. See [A.R.S. § 16-938.A](#) (emphasis added). SB1516 defines "filing officer" as "the [S]ecretary of [S]tate or the county, city or town officer in charge of elections for that jurisdiction who accepts statements and reports for those elections." [A.R.S. § 16-901\(27\)](#). The Commission is not a filing officer under SB1516.

## PROCEDURAL HISTORY

P15 AAN filed suit against the State, the Secretary of State, the Commission, and the Governor's Regulatory

<sup>2</sup>SB1516 also proposed corresponding changes to the Act itself. Those changes were not enacted because they did not receive the VPA-required three-fourths vote. As a consequence, the text of the Act was left unaltered.

Review Council. Though the Commission was a named defendant, it supported AAN's position in the superior court and joins AAN as an appellee here. Appellees challenge SB1516's amendments as outlined above, arguing they are unconstitutional **[\*\*8]** under the VPA because they amend the Act but were neither passed with a three-fourths majority nor further the Act's purpose.

P16 On cross-motions for summary judgment, the superior court entered judgment for appellees. The superior court found SB1516 (1) "effectively amend[s] the Act by altering key definitions" and (2) restricts the Commission "from enforcing requirements . . . that are within the scope of the Commission's enforcement jurisdiction under the Act." The superior court, therefore, enjoined the following provisions of SB1516:

1. Regarding the definition of "contribution," the exemption of "payment by a political party to support its nominee, including . . . [c]oordinated party expenditures" ([A.R.S. § 16-911.B.4\(b\)](#)) and the value to a committee of the "[p]ayment of a committee's legal or accounting expenses by any person" ([A.R.S. § 16-911.B.6\(c\)](#));

2. Regarding the definition of "expenditures," the exemption of the value to a committee of "[p]ayment of a committee's legal and accounting expenses" ([A.R.S. § 16-921.B.4\(c\)](#)) and of "[a]ny payment for legal or accounting services that are provided to a committee" ([A.R.S. § 16-921.B.7](#));

3. Regarding "primary purpose," the term's definition ([A.R.S. § 16-901\(43\)](#)) and the rebuttable presumption a non-compliant **[\*\*9]** 501(a) tax-exempt entity making contributions or expenditures is "organized for the primary purpose of influencing the result of an election" ([A.R.S. § 16-905.D](#)); and

4. Regarding investigative authority under [A.R.S. § 16-938.A](#) as it relates to the Commission only, the phrase "is the sole public officer who."

P17 The superior court awarded AAN \$51,564.13 in attorney fees and costs. The State timely appealed. This court has jurisdiction under Article 6, Section 9, of the Arizona Constitution, and [A.R.S. § 12-2101.A.1](#).

## ANALYSIS

**HN4**  P18 This court reviews the constitutionality and

interpretation of statutes *de* **[\*1154]** *novo*, See [Maestas, 244 Ariz. at 11, ¶ 6](#); [Brain, 234 Ariz. at 325, ¶ 11](#). "When the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, we presume the statute is constitutional and will uphold it unless it clearly is not." [Cave Creek Unified Sch. Dist. v. Ducey, 233 Ariz. 1, 5, ¶ 11, 308 P.3d 1152 \(2013\)](#). The party challenging the statute bears the burden of proving its unconstitutionality. *Id.*

**HN5**  P19 The "primary objective in interpreting a voter-enacted law is to effectuate the voters' intent." [Brain, 234 Ariz. at 325-26, ¶ 11](#). If the statute's language is clear and unambiguous, courts "must give effect to that language without employing other rules of statutory construction." [Parsons v. Ariz. Dep't of Health Servs., 242 Ariz. 320, 323, ¶ 11, 395 P.3d 709 \(App. 2017\)](#). If the language, however, is ambiguous, courts "look to the rules of statutory construction and **[\*\*10]** consider the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." [Stein v. Sonus USA, Inc., 214 Ariz. 200, 201, ¶ 3, 150 P.3d 773 \(App. 2007\)](#) (quotations omitted).

### **I. [Subsection 16-961.A](#)'s reference to the definitions of "contribution" and "expenditures" in [§ 16-901](#) does not extend VPA protections to those definitions.**

P20 Appellees argue that by referencing the definitions of "contribution" and "expenditures" in [§ 16-901](#), the Act incorporates those definitions as they existed in 1998 into the Act and therefore extends the VPA's protection to them.

P21 Beginning—as this court must—with the statute's language, [subsection 16-961.A](#) provides:

The terms "candidate's campaign committee," "contribution," "expenditures," "exploratory committee," "independent expenditure," "personal monies," "political committee" and "statewide office" are defined in [section 16-901](#).

P22 As with the provision at issue in *Brain*, this language "can be reasonably read as either providing" instruction on where a definition can be found, as the State argues, or fully incorporating the relevant definitions into the Act, as appellees argue. See [234 Ariz. at 325, ¶ 13](#). Accordingly, we must "look to the

rules of statutory construction." See [Stein, 214 Ariz. at 201, ¶ 3](#) (quotation omitted). **[\*\*11]**

P23 In *Brain*, the Commission challenged the legislature's power to amend contribution limits then defined in [§ 16-905](#) because the Act references those limits. Specifically, [subsection 16-941.B of the Act](#) prohibits nonparticipating candidates (meaning candidates who have chosen to forego public financing under the Act) "from accepting contributions greater than eighty percent of the campaign contribution limits specified in [A.R.S. § 16-905](#)." See [Brain, 234 Ariz. at 323, ¶ 1](#) (referencing pre-SB1516 version of [§ 16-905](#)). The issue in *Brain* was "whether the Act fixes campaign contribution limits at eighty percent of the amounts that existed [when the Act was passed] or instead provides a formula for calculating limits." *Id.*

P24 In *Brain*, the supreme court held the Act did not permanently fix the contribution limits as they existed when it was passed. See [id. at 325, ¶ 14](#). Instead, it recognized the limits in then-[§ 16-905](#) were variables in a formula under the Act, and as variables, the VPA did not protect them. See [id. at 325-26, ¶¶ 15-16](#). If "voters intended to fix static contribution limits, they could have easily and clearly done so by specifying dollar amounts." See [id. at 325, ¶ 15](#). Because voters provided "fixed monetary amounts" in other parts of the Act, "no sound reason exists **[\*\*12]** to conclude that the voters intended to establish fixed contribution limits . . . by using a percentage formula that expressly incorporates another, existing statute, [then] [§ 16-905](#)." [Id. at 326, ¶ 16](#).

P25 The supreme court reached this conclusion after considering five factors:

1. Does the Act use the term in a formula?

**[\*1155]** 2. Does the Act treat the disputed term differently than other terms?

3. Would the Commission's position create anomalies that are not fair and reasonable?

4. Would the Commission's position create a needlessly confusing system?

5. Did anything in the ballot and attendant publicity pamphlet suggest voters intended the Act to fix the 1998 terms?

See [id. at 325-27, ¶¶ 14-21](#). Applying each of these factors here shows the terms "contribution" and "expenditures" are not VPA protected.

**HN6** P26 As to the first factor, a formula is "a set

form of words for indicating procedure to be followed." [Id. at 325, ¶ 15](#) (quoting Random House Webster's Unabridged Dictionary (2d ed. 2001)). A formula typically will specify how certain variables must be treated. See [Brain, 234 Ariz. at 325, ¶ 15](#) ("Application of a percentage to a given amount is characteristic of a formula."). A variable is "something that may or does vary; a variable feature or factor." See Random **[\*\*13]** House Webster's Unabridged Dictionary (2d ed. 2001). It comes from the verb, to vary, which means "to change or alter, as in form, appearance, character, or substance." *Id.* Variables referenced in a formula in a VPA-protected statute do not enjoy VPA protections unless they also are specifically defined within a VPA-protected statute. See [Brain, 234 Ariz. at 325-26, ¶¶ 15-16](#).

P27 The statute at issue in *Brain* references two variables, contributions and contribution limits. See [A.R.S. § 16-941.B](#). The specific issue in *Brain* involved only the latter—contribution limits. If the sum of a nonparticipating candidate's contributions exceeds the contribution limit under [subsection 16-941.B](#), the candidate violates Arizona's campaign-finance laws. Defined contributions—at issue here—and the defined contribution limits—at issue in *Brain*—are variables on opposite sides of the same formula. This point is equally true of expenditures and expenditure limits. See, e.g., [A.R.S. § 16-941.A.2](#) (addressing participating candidate expenditure limits).

**HN7** P28 In short, the definitions of "contribution" and "expenditures" are variables in the Act's formula for calculating total contributions and total expenditures. Assistance in the form of a "contribution" is subject **[\*\*14]** to the contribution limits, but assistance in a form that does not constitute a "contribution" is not. "Expenditures" work the same way. And nothing in SB1516 changes those formulas.

P29 Moving to the second factor, the Act treats the terms in [subsection 16-961.A](#)—including "contribution" and "expenditures"—differently from the other terms in [§ 16-961](#). Only [subsection 16-961.A](#) references an *entire definition* from another statute. The remainder of [§ 16-961](#) provides fixed, specific definitions for terms used within the Act. See, e.g., [A.R.S. § 16-961.B.1](#) (defining "election cycle"), [.C](#) (defining "participating candidate" and "nonparticipating candidate"), [.F.1](#) (defining "party nominee"). Consistent with the reasoning in *Brain*, if "voters intended to fix [the definitions in [subsection 16-961.A](#)], they could have easily and clearly done so" by including the definitions within the terms of the Act itself.

See [234 Ariz. at 325, ¶ 15](#). They did not. "The fact that voters treated the [§ 16-9\[61.A\]](#) terms] differently" suggests the voters did not intend to fix the definitions of those terms when they referenced [§ 16-901](#). See [id. at 326, ¶ 17](#).

P30 "In short, [HN8](#) no sound reason exists to conclude that voters intended to establish fixed [definitions] in [§ 16-9\[61.A\]](#) by using a [reference **[\*\*15]** to] another, existing statute, [§ 16-90\[1\]](#)." See [id. at 326, ¶ 16](#); see also [Cleckner v. Ariz. Dep't of Health Servs., 246 Ariz. 40, 43, ¶ 9, 433 P.3d 1200 \(App. 2019\)](#) (courts interpret statutes "to give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial").

P31 Under the third factor, appellees' position would create unfair and unreasonable anomalies, resulting in an uneven playing **[\*\*1156]** field. See [Brain, 234 Ariz. at 326-27, ¶¶ 18-19](#). This factor rebuts an argument the Commission makes on appeal. The Commission argues we could apply the 1998 definitions to candidates for offices governed by the Act but allow the post-SB1516 definitions to apply to candidates for offices that are not. This approach would allow a mayoral or county attorney candidate to accept contributions a gubernatorial or attorney general candidate could not. Compare [A.R.S. § 16-911.B.6\(c\)](#) (exempting "[p]ayment of a committee's legal or accounting expenses" from "contribution"), with [§ 16-901\(5\)\(b\)\(ix\)](#) (1998) (exempting "[l]egal or accounting services [only if the] person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of compliance with this title"). The same is true for calculating "expenditures," resulting in different treatment depending **[\*\*16]** on the office sought. It also would tie candidates for offices governed by the Act to definitions that have become antiquated in part because of technology, while allowing others the benefit of updated definitions. See, e.g., [A.R.S. § 16-911.B.1\(d\)](#) (exempting certain email, internet activity, and social-media messages from definition of "contribution"). As with the contribution limits at issue in *Brain*, nothing here indicates the voters intended such a result. See [234 Ariz. at 326, ¶ 18](#).

P32 As to the fourth factor, each of appellees' proposed solutions would create a needlessly confusing system. See [id. at 327, ¶ 20](#). Appellees' two solutions are (1) fixing the 1998 definitions only for candidates governed by the Act (meaning, candidates who run for statewide office and the legislature) or (2) holding that any cross-reference to a statute outside the Act extends VPA

protections to the referenced statute.

P33 Appellees' first proposed solution would become a trap for the unwary, potentially driving up the cost of running for office because of a needlessly complex campaign-finance system, possibly discouraging the uninitiated from running for office. Candidates and contributors would have the challenging task of trying to determine **[\*\*17]** which laws, including some that are no longer found in the books, control what they could and could not do for a candidate based on the office sought. It also would limit candidates' ability to change the office sought during the campaign or transfer funds between campaign accounts. The differences in the definitions could cause campaign-finance violations for the new office even if the conduct were appropriate for the original office. All these potential impacts run counter to the goals laid out for the Act. See [A.R.S. § 16-940.B](#).

P34 Turning to appellees' second proposed solution, the Act cross-references more than two dozen statutes, reaching far beyond title 16, chapter 6. See, e.g., [A.R.S. §§ 16-946.B.6](#) (citing the definition of an electronic signature from [§ 41-351](#)); [-957.B](#) (citing timeframe to appeal a penalty issued by the Commission "to the superior court as provided in title 12, chapter 7, article 6"). In the nearly two decades between passage of the Act and SB1516, the legislature amended several of these cross-referenced statutes without the VPA-requisite three-fourths' vote. See, e.g., 2012 Ariz. Sess. Laws, ch. 321, § 116 (2d Reg. Sess.) (repealing title 41, chapter 4, article 5—cross-referenced in [subsection 16-955.J](#)). **[\*\*18]**<sup>3</sup> As the State rightly notes, "[c]onstruing the VPA to encompass these amended statutes merely because they were cross-referenced in the Act calls into question the constitutionality of" these amendments and countless others. In response, the Commission asserts its position "concerns a tiny subset of the definitions incorporated from [§ 16-901](#)." But appellees do not offer, and this court cannot identify, any principled way to limit an adoption of their "specific reference" argument to only "a tiny subset" of [§ 16-961.A](#). Such an unworkable result "cannot be supposed to have been within the [voters'] intention." See [State v. Estrada, 201 Ariz. 247, 251, ¶ 17, 34 P.3d 356 \(2001\)](#) (quotation omitted).

P35 As a final point on this factor, notwithstanding appellees' argument to the **[\*\*1157]** contrary, the "specific reference" statutory construction canon does

<sup>3</sup> See <https://apps.azleg.gov/BillStatus/BillOverview/30531> (last visited Sept. 15, 2020).

not apply here because it does not aid in determining voters' intent. See [Brain, 234 Ariz. at 328, ¶ 27](#). [HN9](#) [↑] "Specific reference" is a "statutory construction canon providing that when a statute adopts another statute by specific reference, the adopted statute is taken as it then exists and does not include subsequent amendments, unless the enactors of the adopting statute expressly intended otherwise." See *id.* Relying on that canon, appellees argue [\*\*19] the Act expressly incorporates the challenged definitions as they existed in 1998. The Commission made the same "specific reference" argument in *Brain*, See *id.* In *Brain*, the supreme court declined to apply the canon, saying it "does not help ascertain the voters' intent," particularly when, as here, other evidence demonstrates that intent. See *id.* The *Brain* dissent agreed the canon did not apply and urged disclaiming it altogether. See [id. at 329, ¶ 35](#) (Bales, V.C.J., dissenting). For these same reasons, we will not apply the canon here.

P36 The State also argues [§ 1-255](#) precludes this court from applying the "specific reference" canon. That section says, "A reference to a statute or portion of a statute applies to all reenactments, revisions or amendments of the statute or portion of the statute." [A.R.S. § 1-255](#). If the statute applied, it would compel the conclusion the Act did not fix the definitions. As discussed above, we conclude—independent of the statute—the canon provides no useful guidance, so we need not address whether it applies.

P37 Addressing the fifth and final factor, "nothing in the ballot or attendant publicity pamphlet for the 1998 election informed voters that [§ 16-9\[61.A\]](#) permanently fixed" the definitions [\*\*20] of "contribution" or "expenditures." See [Brain, 234 Ariz. at 327, ¶ 21](#); see also 1998 Publicity Pamphlet, Proposition 200 (Publicity Pamphlet) at 60-92.<sup>4</sup> This court may "consider ballot materials and publicity pamphlets circulated in support of the initiative." See [Brain, 234 Ariz. at 327, ¶ 21](#). The description from the Legislative Council merely said participating candidates were "[p]rohibited from accepting other contributions, except as specified for emergency situations" and did not mention any impact on contributions for nonparticipating candidates. See Publicity Pamphlet at 85. The language on the ballot described the Act, and the effect of a "yes" vote, as:

ESTABLISHING 5-MEMBER COMMISSION TO ADMINISTER ADDITIONAL ALTERNATIVE

CAMPAIGN FINANCING SYSTEM; PROVIDING PUBLIC FUNDING AND ADDITIONAL REPORTING FOR PARTICIPATING CANDIDATES; REDUCING CURRENT CONTRIBUTION LIMITS BY 20% FOR NON-PARTICIPATING CANDIDATES; SETTING PERSONAL MONIES AND SPENDING LIMITS FOR PARTICIPATING CANDIDATES; LIMITING PRIVATE CONTRIBUTIONS FOR PARTICIPATING CANDIDATES UNLESS COMMISSION DECLARES EMERGENCY.

A "yes" vote shall have the effect of establishing a 5-member commission to administer an additional alternative campaign financing system which includes spending limits and public funding for participating [\*\*21] candidates; additional reporting for all candidates, and reducing the current contribution limits for non-participating candidates by 20%.

See Publicity Pamphlet at 92.

P38 This ballot language and the other *Brain* factors do not support the outcome appellees seek. For these reasons, the VPA does not protect the definitions of "contribution" and "expenditures." The superior court, therefore, erred in enjoining the challenged portions of SB1516's changes.

**[\*1158] II. Because SB1516's definition of "primary purpose" neither directly nor indirectly impacts the substance of the Act, it does not run afoul of the VPA.**

P39 Appellees argue SB1516's exemption will undermine the Act because far fewer entities are required to register and file campaign-finance reports. The Act originally defined "political committee" to include an entity even if it "may be part of a larger association, combination of persons or sponsoring organization *not primarily organized, conducted or combined for the purpose of influencing the result of any election.*" [A.R.S. § 16-901\(19\)](#) (1998) (emphasis added). The parties discuss the legislature's 2015 amendments limiting the definition of "political committee" to entities whose "primary purpose" was to influence the outcome [\*\*22] of an election. See 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.). Because SB1516 repealed those amendments, they are not relevant here. By excluding tax-exempt entities, SB1516 limited the scope of the registration and filing requirements as they existed in 1998. Significantly, nothing in SB1516 changes any

<sup>4</sup>The Publicity Pamphlet can be found online at <https://azmemory.azlibrary.gov/digital/collection/statepubs/id/35610> (last visited Sept. 15, 2020).

substantive registration or reporting requirements imposed by the Act.

P40 In 1998, of Arizona's campaign-finance registration and reporting requirements were in title 16, chapter 6, article 1—now articles 1 through 1.7. See, e.g., [A.R.S. § 16-905](#) (registration as a "committee"), [-926](#) (content of reports), [-927](#) (report filing periods), [-928](#) (filing officer), [-937](#) (penalties), [-938](#) (enforcement). All but one of the Act's provisions are found in article 2. [HN10](#)<sup>[↑]</sup> Though the Act imposes a handful of reporting requirements, nothing about the term "primary purpose," or SB1516's definition of it, changes the reports a person or entity—political action committee or not—must file under the Act. See, e.g., [A.R.S. §§ 16-941.D](#) (independent expenditure), [-947.A](#) (candidate certification), [-950.B](#) (qualifying contributions), [-958.A](#) (independent expenditure). Simply stated, the registration and reporting requirements outside of **[\*\*23]** article 2 and at issue here are not VPA protected.

P41 Close scrutiny of appellees' other arguments reveals additional flaws. To begin, appellees do not challenge SB1516's repeal of the term "political committee" from [§ 16-901](#). Appellees also do not ask us to reinstate the term as it was defined in 1998. SB1516 replaced the term "political committee" with the term "committee." It defines "committee" to include any "political action committee." [HN11](#)<sup>[↑]</sup> Under SB1516, a "political action committee" is an entity "organized for the primary purpose of influencing the result of an election." See [A.R.S. § 16-905.C](#). Appellees do not challenge that definition here. Therefore, even if appellees prevail, entities whose "primary purpose" is not to influence an election will not need to register or file reports. See *id.*

P42 Next, contrary to appellees' arguments, the term "political committee" is not central to the Act's regulation of candidates' campaign finances. Indeed, the Act only uses the term "political committee" three times, one of which is the reference to the definition in [§ 16-901](#). See [A.R.S. § 16-961.A](#). The other two references have little to do with the operation of Arizona's campaign-finance laws. The first, in [subsection 16-955.I](#), prohibits **[\*\*24]** members of the Commission from serving "as an officer of any political committee" during their tenure "or for three years thereafter." The second, in [subsection 16-958.E](#), obligates the Secretary of State to "distribute computer software to political committees to accommodate" electronic report filing.

P43 With that understanding, SB1516 has little—if

any—effect on requirements imposed by the Act. True, the Commission's members may be able to serve as an officer for some entities they could not before SB1516. Even so, the Commission members, as public officers, are still bound by Arizona's conflict of interest statute. See [A.R.S. § 38-503](#). And though the Secretary of State may not be mandated to distribute software to as many entities, this court takes judicial notice<sup>5</sup> of the fact that separate software is no longer distributed. Indeed, reports are now filed through a publicly-accessible, online- **[\*\*159]** reporting system.<sup>6</sup> The system is available to any person or entity required to file a finance report, and the Secretary of State provides the general public with a system user guide.<sup>7</sup>

P44 Appellees suggest the change will diminish the Commission's power over "dark money" in non-candidate elections, **[\*\*25]** such as campaigns for initiatives or referenda. The Act, however, imposes no requirements on such campaigns, and for good reason. The Act addresses candidate campaign financing, not initiative or referendum financing. Indeed, [subsection 16-940.A](#) states a general intent to create a "clean election system." [Subsection 16-940.B](#) then sets out eight findings in support of the Act. Six of the eight findings exclusively focus on candidates and their access to constituents and resources to run for office. The other two focus on contributors' access to the candidates once they are elected and the ensuing special privileges. See [A.R.S. § 16-940.B.4](#) (addressing concern about "[e]ffectively suppress[ing] the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests"), [.B.6](#) (identifying concern about tax dollars spent "in the form of subsidies and special privileges for campaign contributors"). The financing of non-candidate campaigns simply is not relevant to the Act.

[HN12](#)<sup>[↑]</sup> P45 In short, if a nonparticipating candidate receives a "contribution" from an entity that is not required to register as a "political action committee," the candidate still must report **[\*\*26]** the "contribution." See

<sup>5</sup> See [Ariz. R. Evid. 201; In re Sabino R., 198 Ariz. 424, 425, ¶ 4, 10 P.3d 1211 \(App. 2000\)](#).

<sup>6</sup> See *Beacon*, <https://beacon.arizona.vote/Account/Login> (last visited Sept. 15, 2020).

<sup>7</sup> See Secretary of State, User Guide for Campaign Finance Reporting (2019), <https://azsos.gov/sites/default/files/CFS4%20User%20Guide%20May%202019.pdf>.

A.R.S. § 16-926. Indeed, participating candidates generally cannot even accept such a contribution. See [A.R.S. §§ 16-945, -946](#). And if the entity makes an independent expenditure, it must file reports under the Act, whether or not it is a registered "political action committee." See [A.R.S. § 16-941.D](#). For these reasons, the term "primary purpose" and the related exemption for tax-exempt entities do not run afoul of the VPA.

### III. *Maestas* does not apply to the definitional issues in this case.

P46 Despite the above issues, appellees argue the changes should fail under *Maestas* because SB1516 "indirectly but unambiguously amends the Act to permit conduct the [] Act prohibit[s]." The holding in *Maestas* does not change the above analysis.

P47 In *Maestas*, the supreme court addressed a different voter initiative—the Arizona [Medical Marijuana Act](#) (AMMA). See [244 Ariz. at 10, ¶ 1](#). As relevant here, the AMMA broadly immunizes the use of medical marijuana except in three specific locations. See *id.* (discussing [A.R.S. § 36-2802.B](#)). After voters approved the AMMA, the legislature enacted a separate statute explicitly adding college campuses to the locations in which AMMA-immunity does not apply. See [id. at 13, ¶ 16](#) (discussing [A.R.S. § 15-108.A](#)). The supreme court held [§ 15-108](#) violated **[\*\*27]** the VPA because the new statute deprived cardholders of a right otherwise guaranteed under the AMMA. See [id. at 13-14, ¶¶ 16, 20](#).

P48 The holding in *Maestas* does not apply to the definitions challenged here because SB1516 does not repeal, amend, or supersede any express terms of the Act. [Subsection 16-961.A](#) lists several terms but does not define them. By contrast, the Act explicitly defines the other terms in [§ 16-961](#). See [A.R.S. § 16-961.B-1](#). Though the *Maestas* analysis might be appropriate if SB1516 modified those definitions, it does not apply to [subsection 16-961.A](#)'s references. See [244 Ariz. at 13, ¶ 16](#).

P49 Further, as with the references at issue in *Brain*, "[v]oters in 1998 constructively knew that the legislature would at some point likely amend [§ 16-90\[1\]](#) . . . as it had done [six] times in the preceding twelve years, including [twice] the year before the **[\*1160]** election." See [234 Ariz. at 326, ¶ 18](#). Notably, in 1997—just one year before voters enacted the Act—the legislature amended the definition of each term at issue here. See

1997 Ariz. Sess. Laws, ch. 201, § 1 (1st Reg. Sess.) (amending "contribution," "expenditures," and "political committee"); 1997 Ariz. Sess. Laws, ch. 5, § 37 (2d Sp. Sess.) (again amending "contribution" and "expenditures"). And since **[\*\*28]** 1998, the legislature twice amended the term "political committee" without challenge. See 2012 Ariz. Sess. Laws, ch. 361, § 16 (2d Reg. Sess.); 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.).

P50 In short, the amendment in *Maestas* is not analogous to the amended definitions in SB1516.

### IV. SB1516 violates the VPA to the extent it limits the Commission's investigative authority under the Act.

P51 The State argues [subsection 16-938.A](#) creates no conflict because it delegates only investigative authority to the filing officer, while the Commission retains its enforcement authority under the Act. Appellees respond that "[t]o the extent [A.R.S. § 16-938\(A\)](#) prohibits the Commission from investigating violations within its jurisdiction under the Act, it violates the VPA." [HN13](#)  When interpreting a statute, this court strives "to give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial." See [Cleckner, 246 Ariz. at 43, ¶ 9](#). Consistent with the Commission's position, the superior court found [subsection 16-938.A](#) violates the VPA by "attempt[ing] to prohibit the [Commission] from enforcing requirements in title 16, chapter 6, articles 1-1.6 that are within the scope of the Commission's **[\*\*29]** enforcement jurisdiction under the Act."

[HN14](#)  P52 To begin, the Commission, as an administrative agency, has the power "authorized by the express provisions of its enabling statutes." See [Peeples, Inc. v. Ariz. State Land Dep't ex rel. Anable, 204 Ariz. 66, 71, ¶ 18, 59 P.3d 830 \(App. 2002\)](#). Because the Commission's investigatory authority comes from the Act, the legislature may not limit that authority unless it complies with the VPA. See [Maestas, 244 Ariz. at 13, ¶ 14](#).

P53 The Act obligates the Commission to "[e]nforce *this article*"—article 2—while "monitor[ing] reports filed pursuant to *this chapter*"—meaning chapter 6 of title 16, comprised of articles 1 through 1.7 and article 2. See [A.R.S. § 16-956.A.7](#) (emphasis added). Further, the Act requires participating candidates to file a signed application certifying, under oath, compliance with "all

campaign finance reports required under *article 1 of this chapter*." See [A.R.S. § 16-947.B.2](#) (emphasis added). The Act also contemplates the Commission denying an application "for failure to file all *complete and accurate* campaign finance reports." See [A.R.S. § 16-947.C](#) (emphasis added).

P54 The Act creates specific "contribution" and "expenditure" limits. See [A.R.S. § 16-941](#). The Commission is empowered to force the "disqualification of a candidate or forfeiture of office" on the basis of "[a]ny campaign finance report filed indicating **[\*\*30]** a violation of" those limits. See [A.R.S. § 16-942.C](#) (emphasis added); see also [Smith v. Ariz. Citizens Clean Elections Comm'n, 212 Ariz. 407, 411, ¶ 14, 132 P.3d 1187 \(2006\)](#).

P55 The Act also imposes reporting obligations on "any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle." See [A.R.S. § 16-941.D](#) (emphasis added). The Commission is charged with enforcing this provision, which includes investigating alleged violations by reviewing any campaign-finance reports the entity may have filed under articles 1 through 1.7—for example, as a "political action committee." See [A.R.S. § 16-956.A.7](#).

**HN15**  P56 Under the Act's express language, the Commission has broad enforcement authority. To that end, the Act expressly authorizes the Commission to investigate:

The [C]ommission may subpoena witnesses, compel their attendance and testimony, **[\*1161]** 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 [C]ommission's duties or the exercise of its powers*.

[A.R.S. § 16-956.B](#) (emphasis added). *But cf.* [A.R.S. § 16-905.E](#) (prohibiting "a filing officer, enforcement officer or other officer of a city, town, county or other political subdivision of this state" from issuing subpoenas to 501(a) **[\*\*31]** tax-exempt entities). The Commission's duties and powers include investigating potential violations of articles 1 through 1.7 to the extent they would identify a violation of the Act—violations the Commission alone is empowered to enforce. See, e.g., [Smith, 212 Ariz. at 411, ¶ 14](#).

**HN16**  P57 Not only may the Commission act in

furtherance of its powers *sua sponte*, the Act expressly contemplates the Commission receiving—and acting upon—third-party complaints about violations within its purview. See [A.R.S. § 16-956.A.7](#) (prohibiting "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"). Those third-party complaints may be based, in part, on information included in, or omitted from, campaign-finance reports filed under articles 1 through 1.7. For the Commission to act upon such an external complaint, it must use its investigative authority regarding those reports, or no enforcement would be possible.

P58 The superior court, therefore, correctly enjoined the "sole public officer" limitation in [subsection 16-938.A](#) as it relates to the Commission.

## CONCLUSION

P59 For **[\*\*32]** these reasons, we vacate the superior court's judgment regarding [A.R.S. §§ 16-901\(43\), -905.D, -911.B.4\(b\), -911.B.6\(c\), -921.B.4\(c\), and -921.B.7](#). The portion of the judgment permanently enjoining the phrase "is the sole public officer who" in [A.R.S. § 16-938.A](#) as it relates to the Commission is affirmed. Finally, we vacate the award of attorney fees and costs and remand to the superior court to exercise its discretion in recalculating any award of fees or costs, consistent with this opinion.

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End of Document

**D-2**

**DEPARTMENT OF AGRICULTURE**

Title 3, Chapter 4, Department of Agriculture - Pest Management Division

**Amend:** R3-4-1001, R3-4-1002, R3-4-1003, R3-4-1004, R3-4-1005, Table 1, R3-4-1006,  
R3-4-1007, R3-4-1008, R3-4-1011, R3-4-1012, R3-4-1013, R3-4-1014



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 18, 2021

**SUBJECT: DEPARTMENT OF AGRICULTURE**  
Title 3, Chapter 4, Department of Agriculture - Plant Services Division, Article 10, Industrial Hemp

**Amend:** R3-4-1001, R3-4-1002, R3-4-1003, R3-4-1004, R3-4-1005, Table 1, R3-4-1006, R3-4-1007, R3-4-1008, R3-4-1011, R3-4-1012, R3-4-1013, R3-4-1014

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### Summary:

This regular rulemaking from the Department of Agriculture (Department) seeks to amend rules in Title 3, Chapter 4, Article 10 relating to Industrial Hemp. The Department includes a detailed justification for this rulemaking in Item 6 of the Preamble. The Department states that the purpose of revising the industrial hemp program rules has three primary objectives: (1) to reduce licensing fees to ensure the income is comparable to expenditures for the program; (2) to comply with the federal regulations under 7 CFR Part 990 for domestic hemp production; and (3) to ease the overall regulatory burden and reduce the amount of paperwork produced, while maintaining regulatory control for the regulated community.

The Department previously amended Table 1 in these rules by emergency rulemaking at [27 A.A.R. 39, January 8, 2021](#). It received Attorney General approval to conduct the emergency rulemaking on December 17, 2020.

The Department is requesting an immediate effective date for this regular rulemaking in order to comply with federal law regarding the production of industrial hemp. The Department states that an immediate effective date would ensure that there is no lapse in the change of licensing fees modified through the emergency rulemaking. The Department also indicates that an immediate effective date would benefit the regulated community by reducing the overall regulatory burden with less stringent regulations and clearer provisions for program compliance.

The Department received an exception from Executive Order 2020-02 to initiate this rulemaking on August 4, 2020 and final approval on May 26, 2021.

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

Yes. The Department cites both general and specific statutory authority in conducting this regular rulemaking.

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

No. The rules do not establish a new fee or contain a fee increase.

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

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

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

Beneficiaries of the industrial hemp program ("Program") are hemp growers, nurseries, harvesters, transporters, and processors as well as customers for hemp products and the State of Arizona. All licensing fees are placed in the trust fund for the benefit of the Program and do not revert to the state general fund. Therefore, the Program has little to no effect on state revenues. Additional changes in the proposed rulemaking are intended to comply with federal regulations, to comply with current departmental practices, and to make the rules clearer and more concise.

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

According to the Department, the benefits of the industrial hemp program exceed the costs thereof. There are no less intrusive or less costly alternatives for administering the Program.

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

Licensed industrial hemp growers, nurseries, harvesters, transporters and processors will directly benefit from the rulemaking because of reduced licensing fees and more opportunity to enter the industry. Other changes in the rulemaking will allow for compliance with federal law and approval of a “State Hemp Plan” through the United States Department of Agriculture (USDA), allowing for possible eligibility for federal grants, crop insurance, and other federal assistance. The Department bears minimal costs in implementing the industrial hemp program.

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

No. As the Department indicates in Item 10 of the Preamble, the Department made technical, non-substantive changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

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

Yes. As the Department indicates in Item 11 of the Preamble, it received one comment from a stakeholder about this regular rulemaking. The Department adequately responded to the comment received. Both the comment and the Department’s response thereto are included with the enclosed materials for the Council Members’ review.

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

The Department states that the licenses issued pursuant to A.R.S. § 3-314 (Industrial hemp licenses; applications; fees; fingerprinting requirements; renewal; revocation) and Title 3, Chapter 4, Article 10 do not qualify as general permits as defined in A.R.S. § 41-1001(11). Upon review of the applicable statutes, Council staff agrees that the Department is exempt from the general permit requirement under A.R.S. § 41-1037(A)(2) and/or (3).

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 indicates in Item 12b of the Preamble that federal laws and regulations are applicable to certain rules that are the subject of this rulemaking. The Department states that the rules are not more stringent than applicable federal laws and regulations.

**11. Conclusion**

In this regular rulemaking, the Department seeks to amend the rules regarding industrial hemp to comply with applicable federal laws and regulations, reduce licensing fees, and reduce the overall regulatory burden on the regulated community. Council staff finds that the Department demonstrates justification for an immediate effective date pursuant to A.R.S. § 41-1032(A)(2). Council staff recommends approval of this regular rulemaking with an immediate effective date.



# Arizona Department of Agriculture

Environmental and Plant Services Division  
1688 W. Adams Street, Phoenix, Arizona 85007  
P: (602) 542-0994 F: (602) 542-1004

July 19, 2021

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

**RE: Request for Placement on Agenda - Final Rulemaking A.A.C. Title 3, Chapter 4, Article 10**

Dear Ms. Sornsins:

The Arizona Department of Agriculture is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and discussion. Enclosed with this letter you will find the final rulemaking packet for A.A.C. Title 3, Chapter 4, Article 10, prepared by the Arizona Department of Agriculture ("Department").

The close of record for the proposed rulemaking occurred on May 18, 2021 following a public hearing for oral comments. During the comment period, following the filing of the proposed rulemaking, one written comment was received by the Department and the commenter was provided a response. No other comments were received regarding the proposed rulemaking during the comment period. This rulemaking activity is not in relation to a five-year review report. The rulemaking does not establish any new fees. The rulemaking does not contain any fee increases. There were no studies conducted related to the rulemaking. No additional employees are necessary to implement and enforce the changes to the rules.

An immediate effective date is requested for the rules under A.R.S. § 41-1032 (A)(2) and (5). The Department must comply with federal hemp production laws related to the domestic production of hemp which were made effective on March 22, 2021. The Department would also like to reduce the regulatory burden on the regulated community immediately to address compliance issues that are currently inconsistent with federal standards. Enclosed with this letter is:

1. The Notice of Final Rulemaking
2. The Economic, Small Business, and Consumer Impact Statement
3. The Authorizing statutes
4. Federal laws and regulations referenced in the rulemaking
5. A copy of the written comment received and the response provided

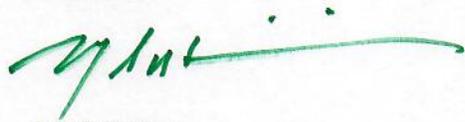
Please contact Brian McGrew at (602) 542-3228 or [bmcgrew@azda.gov](mailto:bmcgrew@azda.gov) with any questions about this rulemaking.

**Request for Placement on Agenda**

**July 19, 2021**

**Page 2**

Sincerely,



Mark Killian

Director

cc: Jack Peterson, Associate Director

Brian McGrew, Industrial Hemp Program Manager

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

PREAMBLE

**1. Article, Part, or Section Affected      Rulemaking Action**

R3-4-1001	Amend
R3-4-1002	Amend
R3-4-1003	Amend
R3-4-1004	Amend
R3-4-1005	Amend
Table 1	Amend
R3-4-1006	Amend
R3-4-1007	Amend
R3-4-1008	Amend
R3-4-1011	Amend
R3-4-1012	Amend
R3-4-1013	Amend
R3-4-1014	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. § 3-107(A)

Implementing statute:      A.R.S. § 3-313

**3. The effective date of the rule:**

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

The Department requests that an immediate effective date be prescribed in an effort to comply with federal law for the domestic production of industrial hemp. An immediate effective date would also ensure there is no lapse in the change of licensing fees modified by emergency rulemaking. An immediate effective date would benefit the regulated community by reducing the overall regulatory burden with less stringent regulations and clearer provisions for program compliance.

**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: Vol. 26, Issue 35 A.A.R. Pg. 1764, August 28, 2020

Notice of Emergency Rulemaking: Vol. 27, Issue 2 A.A.R. Pg. 39, January 8, 2021

Notice of Proposed Rulemaking: Vol. 27, Issue 16 A.A.R. Pg. 571. April 16, 2021

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

Name:      Brian McGrew

Address:      1688 W. Adams St., Phoenix, AZ 85007

Telephone: (602) 542-3228

Fax: (602) 542-1004

E-mail: [azhemp@azda.gov](mailto:azhemp@azda.gov)

Web site: <https://agriculture.az.gov/plantsproduce/industrial-hemp-program>

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

The Department has received an exception from the rulemaking moratorium established by Executive Order 2020-02 under criteria (1)(b) and (f) to revise the industrial hemp program rules to achieve three primary objectives: (1) reduce licensing fees to ensure the income is comparable to expenditures for the program; (2) comply with the federal regulations under 7 CFR Part 990 for domestic hemp production; and (3) ease the overall regulatory burden and reduce the amount of paperwork produced, while maintaining regulatory control for the regulated community. Changes to rule R3-4-1001 update and expand on definitions to further clarify terms in the article and reduce confusion with the regulated community and the public. Changes to rule R3-4-1002 include clarification of the eligibility requirement for criminal background checks to comply with federal regulations for the domestic production of industrial hemp. Changes to rule R3-4-1003 clarifies and provides additional guidance regarding the requirements and provisions to obtain a license and participate in the industrial hemp program, and to align terminologies with the federal regulations. The proposed change to rule R3-4-1004 is intended to clarify that hemp products produced under a research exemption are not allowed to enter the commercial stream of commerce. Changes to rule R3-4-1005 are intended to make the rule more clear and concise and to align with current Department practices. Changes to Table 1 include a reduction in licensing fees to reduce a burden on the regulated community and clarify language to indicate that the per-acreage inspection fee is for at least one acre that is inspected. Changes to rule R3-4-1006 eases reporting requirements that have been determined to be redundant and unnecessary and includes guidance for a hemp-nursery license holder to facilitate movement of live planting material. Changes to rule R3-4-1007 adds a provision to prohibit the use of the Department logo or its likeness on required signage. Changes to rule R3-4-1008 include:

- Provisions to implement alternative sampling methods.
- Clarification that a crop may not be harvested until a sample is collected
- A requirement that a representative of the licensee must be present at the time of sampling.
- Provisions for laboratory standards for the compliance testing of hemp crops.
- Guidance on how compliant and non-compliant crops are handled.

Changes to rule R3-4-1011 clarifies what is required for program planting reports, intent to harvest reports, intent to transport notifications, notices of destruction and processor notifications. Changes to rule R3-4-1012 removes redundant hemp transportation notification language and clarifies (intentional, knowing, and negligent) violations to comply with federal hemp laws. Changes to rule R3-4-1013 clarifies the corrective action process and provides additional guidance on methods of crop disposal. Changes to rule 1014 clarify violations for non-licensed individuals.

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

No study was conducted.

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

The rulemaking does not diminish any previous authority of a political subdivision of this state.

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

The statutory purpose of the industrial hemp program was to “improve the economy and agricultural vitality” of Arizona. The Department bears minimal costs in implementing the Program. Other than the Department, no political subdivision is directly affected by the Program. Beneficiaries of the industrial hemp program are hemp growers, nurseries, harvesters, transporters, and processors as well as customers for hemp products and the State of Arizona. In 2019, there were 359 Program licensees. Slightly less than half of those licensees were hemp growers. Licensing fees were reduced 33% overall at the end of 2020 under an Emergency rulemaking, with the intent to finalize the reduction in this proposed rulemaking. In view of this reduction, the impact to small businesses is minimal, and the benefits of the Program exceed the cost thereof. There are no less intrusive or less costly alternatives for administering the Program. All licensing fees are placed

in the trust fund for the benefit of the Program and do not revert to the state general fund. Therefore, the Program has little or no effect on state revenues. Other changes in the proposed rulemaking are intended to align with federal regulations under 7 U.S.C. § 5940 and 7 U.S.C. § 1639o, *et seq.*, and 7 C.F.R. part 990. Alignment with federal regulations is necessary in order for Arizona to obtain U.S. Department of Agriculture (USDA) approval of Arizona's industrial hemp plan. USDA approval of this plan is beneficial to program stakeholders as it allows for eligibility for federal crop insurance and grants. Without USDA approval of the proposed rulemaking, these resources will not be made available to Arizona program participants. Lastly, additional changes made the rules clearer and more concise, to align with current departmental practices and to reduce overly-burdensome regulations.

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

Based on the initial feedback from the Arizona Governor's Regulatory Review Council, the incorporated federal references were updated to meet the requirements under A.R.S. § 41-1028. Based on feedback received from the Arizona Secretary of State's Office after the Notice of Proposed Rulemaking was filed, the instances of "and/or" in sub-sections R3-4-1003(A) (1); (B)(2)(b), (c), and (e); R3-4-1005(A) and (B); and R3-4-1013(D)(2)(d) were changed to either "and" or "or". In R3-4-1003(E)(3) the phrase "of this article" after "Table 1" was inadvertently removed in the Notice of Proposed Rulemaking and was replaced in the Notice of Final Rulemaking to be struck. Based on the feedback received from USDA, the term "culpable mental state greater than negligence" was added in parentheses to R3-4-1012(E) to clarify the term is synonyms with "knowingly and intentionally". This addition is not seen as a substantive change since it is only added to provide clarification and to align with federal hemp laws.

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

The Department received one written comment from stakeholders about the proposed rulemaking. The stakeholder indicated that with legalization of adult-use marijuana the hemp rules should be removed to alleviate the regulatory burden. The response from the Department is that this is not possible for several reasons, including but not limited to: (1) the production, sale, interstate movement and use of marijuana is not legal at the federal level, and industrial hemp is only legal if a program follows the requirements under the 7 CFR part 990; (2) hemp laws were established so there would be no interference with the strict regulation of marijuana in this state, which is much more stringent and burdensome than hemp regulatory oversight; (3) hemp is a commodity that does not contain the same amount of psychoactive compound as marijuana (tetrahydrocannabinol or THC), and the hemp industry is governed by federal laws requiring strict regulatory oversight to enough THC to be illegal under federal law. No other comments were received during the oral proceeding.

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

No other matters are prescribed to the Department.

**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 licenses issued under A.R.S. § 3-314 and Title 3, Chapter 4 Article 10 do not qualify as a general permit under A.R.S. § 41-1037.

**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 regulations 7 U.S.C. § 5940; 7 U.S.C. § 1639o *et seq.* and 7 C.F.R. part 990, apply to the following rules:

- R3-4-1001 through R3-4-1003
- R3-4-1006
- R3-4-1008
- R3-4-1011 through R3-4-1014

The rules are not more stringent than federal law.

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

No analysis was conducted.

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

Federal regulations 7 U.S.C. § 5940 (agricultural act of 2014 PL 113-79; 128 Stat. 656, eff. January 5, 2015,

<https://www.congress.gov/bill/113th-congress/house-bill/2642/text>); 7 U.S.C. § 1639o *et seq.* (agricultural improvement act of 2018, PL 115-334; 132 Stat. 4908, eff. December 20, 2018, <https://www.congress.gov/bill/115th-congress/house-bill/2/text>); and 7 C.F.R. part 990, (86 FR 5596, eff. March 22, 2021, [https://www.ecfr.gov/cgi-bin/text-idx?node=se7.8.990\\_11&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?node=se7.8.990_11&rgn=div8)) are incorporated by reference in R3-4-1001; and 7 U.S.C. § 5940 (agricultural act of 2014 PL 113-79; 128 Stat. 912, eff. January 5, 2015, <https://www.govinfo.gov/content/pkg/PLAW-113publ79/html/PLAW-113publ79.htm>) is incorporated by reference in R3-4-1002. These rules do not include any later amendments or editions of the incorporated matter.

**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:**

Notice of Emergency Rulemaking: Vol. 27, Issue 2 A.A.R. Pg. 39, January 8, 2021. No changes were made between the emergency and final rulemaking packages.

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

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION**

**ARTICLE 10. INDUSTRIAL HEMP**

Section

R3-4-1001.	Definitions
R3-4-1002.	Program Eligibility
R3-4-1003.	Licenses; Applications; Renewals; Withdrawal
R3-4-1004.	Industrial Hemp Research
R3-4-1005.	Fees
Table 1.	Fee Schedule
R3-4-1006.	Authorized Seed and Propagative Materials
R3-4-1007.	Location Requirements; Signage
R3-4-1008.	Compliance; Recordkeeping; Audits
R3-4-1011.	Notifications; Reports
R3-4-1012.	Unauthorized Activity; Violations
R3-4-1013.	Corrective Actions
R3-4-1014.	Penalties

**R3-4-1001. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-201, 3-311, and A.A.C. R3-4-101, the following terms apply to this Article.

"0.300%" shall have the same meaning as three-tenths percent.

"Applicant" means a key participant who seeks a license or certification as a grower, nursery, harvester, transporter, or processor under this Article.

"Associate Director" means the Associate Director of the ~~Plant Services~~ Division.

"Authorized sampling agent" means an inspector of the Department or independent party that has been trained by an authorized representative of the Department to collect samples of industrial hemp crops to determine compliance with applicable hemp laws.

"Biomass" means the homogenized pieces and parts, including but not limited to stems, leaves and floral parts of hemp.

"Certified laboratory" means the State Agriculture Laboratory or any laboratory certified by the State Agriculture Laboratory to perform compliance analysis of industrial hemp.

"Corrective action plan" means a plan utilizing the methods outlined in R3-4-1013(D)(2) for correcting a negligent violation or non-compliance with applicable hemp laws, which is either proposed by a licensed hemp producer and approved by the Associate Director, or issued by the Associate Director.

"Decarboxylated" means the completion of the chemical reaction that converts THCA into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and 87.7% of THCA ((delta-9 THC) + (0.877 \* THCA)).

"Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.

"Delta-9 tetrahydrocannabinol" means the primary psychoactive component of cannabis. For the purposes of this Article, delta-9 THC and THC are interchangeable.

"Department" means the Arizona Department of Agriculture.

"Director" means the Director of the Department.

"Disposal" means an activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green manure; burning plant material; or burying plant material into the earth and covering with soil.

"Division" means the Plant Services Division of the Department.

"Entity" means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

"Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

"Harvest Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

"Hemp" has the same meaning as industrial hemp.

"Hemp laws" mean, unless otherwise specified herein, A.R.S. Title 3, Chapter 2 and rules adopted thereunder in Article 4.1, A.A.C. R3-4-1001, *et seq.*; 7 U.S.C. § 5940 (agricultural act of 2014 PL 113-79; 128 Stat. 656, eff. January 5, 2015, <https://www.congress.gov/bill/113th-congress/house-bill/2642/text>); 7 U.S.C. § 1639o *et seq.* (agricultural improvement act of 2018, PL 115-334; 132 Stat. 4908, eff. December 20, 2018, <https://www.congress.gov/bill/115th-congress/house-bill/2/text>); and 7 C.F.R. part 990, (86 FR 5596, eff. March 22, 2021, [https://www.ecfr.gov/cgi-bin/text-idc?node=se7.8.990\\_11&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idc?node=se7.8.990_11&rgn=div8)). The rule does not include any later amendments or editions of the incorporated matter.

"Intentionally" means the state of mind defined in A.R.S. § 13-105(10)(a) or any successor statute.

"Key participant" means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

"Knowingly" means the state of mind defined in A.R.S. § 13-105(10)(a) or any successor statute.

"Licensing Agreement" means a contract between the Department and an applicant that indicates the terms and conditions required for a license issued pursuant to this Article.

"Lot" means the same as harvest lot.

"Manmade causes" means the influence to an industrial hemp crop created by a person, including but not limited to, irrigation, fertilization, chemical application, or physical interference.

"Measurement of Uncertainty (MU)" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

"Natural causes" means the influence to an industrial hemp crop created by elements of nature including, but not limited to, temperature,

wind, rain, hail, or flood.

"Performance based sampling" means a sampling method established in substantive policy and posted on the Department's website that ensures, within a 95% confidence level, a harvest lot is compliant with this Article by not having a total delta-9 THC level above the acceptable limit.

"Program" means the Industrial Hemp Program.

"Propagative material" means any industrial hemp seedlings, explants, transplants, propagules, or other rooted material that is grown in a soilless media.

"Remediation" means the process for achieving compliance of non-compliant cannabis. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

"Responsible party" means an individual that has signing authority of a partnership, limited liability company, association, company or corporation.

"THC" means Tetrahydrocannabinol

"THCA" means Tetrahydrocannabinolic Acid

"Total THC or total delta-9 THC" means the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC, which calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample.

~~"Total Delta 9 THC concentration" means the total calculable amount of the chemical compound, Delta 9 THC.~~

### **R3-4-1002. Program Eligibility**

A. Eligibility requirements. Unless otherwise determined to be ineligible under this Article and notwithstanding any other law, a person or responsible party that applies for a program license ~~or registration~~ shall:

1. Possess a valid fingerprint clearance card issued by the Arizona Department of Public Safety pursuant to A.R.S. § 41-1758.07.

a. Applicants who have had a felony narcotics conviction within ten years of the date of application shall not be granted a good cause exception under A.R.S. § 41-1758.07.

b. Applicants who have had a felony narcotics conviction prior to December 11, 2018; and that participated in an agricultural pilot program for the purpose of research into the growth, cultivation and marketing of industrial hemp as authorized by 7 U.S.C. § 5940 (agricultural act of 2014 PL 113-79; 128 Stat. 656, eff. January 5, 2015, <https://www.congress.gov/bill/113th-congress/house-bill/2642/text>) may petition the State for an exception to the eligibility exclusion in subsection R3-4-1002(A)(1)(a). The rule does not include any later amendments or editions of the incorporated matter.

2. Be a citizen of the United States or a legal resident alien, ~~an~~ An individual who applies for a program license ~~and~~ is enrolled in an academic program at an accredited college or university, ~~and but who~~ does not meet the criteria in this Section may be sponsored by an academic member of that college or university who meets the eligibility criteria in this Section and provides proof of eligibility as required in subsection R3-4-1002(B)(2).

3. Be ~~eighteen (18)~~ 18 years of age or older at the time of application.

B. Proof of eligibility.

1. ~~Unless otherwise allowed by an exception to the requirements of this section, the applicant shall provide the Department shall accept~~ a legible photo copy, paper or electronic, of the ~~applicant's~~ applicant's fingerprint clearance card described in subsection ~~(A)(1)-(A)(1)~~, which the Department will validate to ensure the applicant meets the eligibility requirements of this section.
2. The Department shall accept the documents listed in A.R.S. § 41-1080(A) as evidence of age and United States Citizenship or legal residency.

**R3-4-1003. Licenses; Applications; Renewals; Withdrawal**

A. Any person that grows, harvests, transports, or processes industrial hemp in any of the following categories shall obtain the appropriate license from the Department and shall abide by the terms and conditions set forth in the licensing agreement with the Department. Types of licenses include:

1. Grower - An authorized ~~Grower-grower~~ license shall allow the licensee to obtain seed or propagative materials pursuant to this Article for planting, possess authorized seed ~~and/or~~ propagative materials for planting, cultivate the crop, harvest plant parts, possess and store harvested plant parts, and transport plant parts for processing.
2. Nursery - An authorized ~~Nursery-nursery~~ license shall allow the licensee to propagate eligible seed and propagative materials for planting for a licensed grower. A licensed ~~Nursery-nursery~~ shall not grow industrial hemp for harvesting purposes, unless also licensed with the Department as a ~~Grower-grower~~.
3. Harvester - An authorized ~~Harvester-harvester~~ license shall allow the licensee to engage in the activity of harvesting an eligible industrial hemp crop for a licensed grower.
4. Transporter - An authorized ~~Transporter-transporter~~ license shall allow the licensee to engage in the transport of a harvested industrial hemp crop for a licensed grower.
5. Processor - An authorized ~~Processor-processor~~ license shall allow the licensee to engage in the processing, handling, and storage of industrial hemp or hemp seed at one or more authorized locations in the state. The licensee may sell, distribute, transfer, or gift any products processed from harvested hemp that is not restricted in section R3-4-1012

B. At a minimum, applications for a license shall contain the information required in subsections R3-4-1003(B)(1) through (6), plus any additional information that may be required by the Department. Location information shall be retained by the Department for not less than three years. Licensing fees required under R3-4-1005 are due at the time of application ~~(R3-4-1005)~~.

1. ~~All licenses applicants must provide.~~
  - a. Full name, mailing address, telephone number and email address;
  - b. Fingerprint clearance card identification number of the ~~person or responsible party applying~~ applicant;
  - c. If the applicant represents a business entity, the full name of the business, the principal Arizona business location address, the full name, title, and email address of the of the responsible party;
  - d. Tax ID or Social Security Number; and
  - e. Disclosure and explanation of any instance in which the applicant has been denied, debarred, suspended, revoked, or otherwise prohibited from participating in any public procurement or licensing activity.
2. Applicants for a Grower's license-grower's license must also provide:
  - a. Registered planting site(s): street address or major crossroads, legal description, and ~~GPS coordinates~~ geospatial location for each field, greenhouse, building or site where industrial hemp will be grown, updated annually, or within 30 calendar days following a change;
  - b. Estimated acreage for each outdoor location ~~and/or~~ square footage for indoor or each greenhouse locations intended for planting;
  - c. Maps or aerial photos depicting each site where industrial hemp will be grown, handled, ~~and/or~~ stored, with

appropriate designations for entrances, field boundaries, and specific locations corresponding to the ~~GPS coordinates~~.  
geospatial location information;

- d. ~~Storage location(s) (expressed in GPS coordinates)~~ Geospatial location information of all storage locations for seed or propagative materials, and harvested plants and plant parts; and
  - e. Maps or aerial photos depicting each site where industrial hemp seed ~~and/or~~ and propagative materials will be stored and labeled with the corresponding ~~GPS coordinates~~ geospatial location information.
3. ~~Applicants for a Nursery License~~ nursery license must also provide:
- a. ~~Storage location(s) (expressed in GPS coordinates)~~ Geospatial location information of all storage locations for seed or propagative materials;
  - b. ~~Locations (expressed in GPS coordinates) of all~~ Geospatial location information of all propagation areas; and
  - c. ~~labeled~~ Labeled maps or aerial photos depicting storage and propagation areas.
4. ~~Applicants for a Harvester License~~ harvester license must also provide the ~~Maps and the street address~~, legal description and ~~GPS coordinates~~ geospatial location information for each location of the harvesting equipment ~~will be primarily based, together with corresponding labeled maps or aerial photos of the location or locations.~~
5. ~~Applicants for a Transporter License~~ transporter license must also provide: ~~Maps and the street address~~, legal description, and ~~GPS coordinates~~ geospatial location information for each location the transporting vehicles and equipment ~~will be primarily based, together with corresponding labeled maps or aerial photos of the location or locations.~~
6. ~~Applicants for a Processor License~~ processor license must also provide:
- a. Identification of the part of a harvested hemp crop or plant to be received for processing, in the following categories:
    - i. Floral and leaf material, or biomass;
    - ii. Seed for oil or grain;
    - iii. Stalks for fiber or hurds; and
    - iv. Seed or propagative materials for planting.
  - b. ~~Registered processing~~ Processing site(s) information that includes: ~~Street~~ street address or major crossroads, legal description, and ~~GPS coordinates~~ geospatial location information for each building or site where hemp will be processed or stored; or where mobile processing equipment will be primarily based; ~~and, together with labeled maps or aerial photos depicting the processing site information.~~
  - e. ~~Labeled maps or aerial photos depicting the information in subsection (b).~~
- C. Application submission dates. Applications may be submitted at any time during the year, but the expiration date of the license shall be on December 31~~st~~ annually, or biennially for a two-year renewal as authorized in ~~subsection R3-4-1003(D)~~. Renewal applications will be due no later than December 15th. An expired license may be reinstated up to three years after the expiration date, provided the applicant's business information has not changed.
- D. Application for one or two-year renewals. At a licensee's discretion, a person that has been licensed by the Department under the industrial hemp program may apply for a one or two year renewal provided:
1. The person was licensed in the industrial hemp program within the previous calendar year;
  2. The license of the person was in good standing at the time of renewal;
  3. There is no change in the person or responsible party licensed;
  4. There is no change in the physical location of the industrial hemp site;
  5. The licensee does not owe any civil penalties, fees, or late charges to the Department; and
  6. The person submits the associated fee for a one or two-year renewal.
- E. Licensing agreements. All approved applicants for a license shall complete a licensing agreement issued by the Department prior to receiving a license. The licensing agreement may include additional terms and conditions as needed to ensure compliance with this

Article, applicable state and federal laws, and rules and orders of the Director, but, at a minimum the applicant will agree to:

1. Provide access, for authorized Department inspectors, at any time, to all hemp and hemp seed, planted or stored, and all records to determine compliance with this Article and any state or federal law, rule or order regulating ~~Cannabis~~ Cannabis as an agricultural crop;
2. Maintain all records, as stated in section R3-4-1008 ~~of this Article~~;
3. Pay all fees required indicated in Table 1 ~~of this Article~~;
4. Comply with all pesticide use restrictions;
5. Comply with all seed laws of the state;
6. Defend, indemnify, and hold harmless the Department from liability for the destruction of any crop or harvested plant in violation of this Article;
7. Be solely responsible for all financial or other losses;
8. Be solely responsible for all land use restrictions, applicable city and county zoning, building, and fire codes and ordinances; and
9. Follow all regulatory, notification and reporting requirements.

**F. ~~Program withdrawal.~~ Withdrawals.**

1. ~~Unless otherwise authorized by the Associate Director, the licensee shall complete a withdrawal notice at least prior to withdrawal of the Program.~~ When a licensee withdraws from the industrial hemp program, any licensing and inspection fees paid or invoiced prior to any notice of withdrawal are not eligible for refund. In order for a licensee to withdraw from the industrial hemp program, the following requirements must be met:
  - a. ~~Unless otherwise authorized by the Associate Director, the licensee shall complete and submit a withdrawal notice at least ten business days prior to the withdrawal of the Program; and~~
  - b. ~~Any industrial hemp or hemp seed, planted, harvested, or stored must be inspected by the Department prior to transport off of the property, disposal, or transfer to a new or existing licensee.~~
2. ~~Any industrial hemp or hemp seed, planted, harvested, or stored must be inspected by the Department prior to transport off of the property, destruction or transfer to a new or existing licensee;~~
3. ~~Any licensing and inspection fees paid or invoiced prior to any notice of withdrawal are not eligible for refund; and~~
4. ~~2.~~ Withdrawal after submittal of an application but prior to issuance of a license will be prohibited unless the Department determines, in its sole discretion, that such withdrawal is appropriate.

**G. Site modification.** Anytime a licensed grower, processor or nursery modifies the registered site ~~during the licensing period~~ by changing the location of an existing site or by adding additional sites under the license, or removing a registered site from the licensee's record, the licensee shall submit a site modification application and associated site modification fee listed in Table 1 ~~of this Article~~. There is no site modification fee for the request to remove a registered site from the licensee's record or when modifying or adding a site during the licensee's renewal process.

**H. License transfer.** The transfer of an ~~Industrial~~ industrial hemp license is authorized only if the licensee and eligible program applicant completes ~~a~~ and submits a notarized Department issued transfer application and submits any applicable transfer fees listed in Table 1 ~~of this Article~~. The receiver of a transferred license shall complete a licensing application, and execute a licensing agreement as required by this Article, and all duties and responsibilities of the licensee shall be transferred to and acknowledged by the receiver in a written agreement between the licensee and receiver. Any license or other fees paid by the licensee shall be credited to the benefit of the receiver.

**I. Change in Business Information. Licensees must complete and submit a Change in Business Information form within ten business days if there is any change in business information including business name, address, or other contact information.**

**R3-4-1004. Industrial Hemp Research**

- A. A person, company, college or university that conducts research into the growth, harvesting techniques, transportation methods, or processing of industrial hemp is required to obtain a license pursuant to this Article.
- B. A person, company, college or university conducting not-for-profit research may be exempted from the licensing fee(s) provided that:
  - 1. The applicant submits to the Department a request for an exemption of the licensing fee;
  - 2. The applicant provides a summary of the research to be conducted;
  - 3. The applicant provides a summary of the benefit to the agricultural community that will be gained;
  - 4. The applicant signs into an agreement with the Department that as a result of the research conducted the applicant will not gain any monetary profit;
  - 5. The research will be conducted in compliance with this Article or any other law, rule, or order governing the production of industrial hemp; and
  - 6. The results or summary of the research will be published or made publicly available.
- C. Intellectual property. The Department holds no rights to any intellectual property ~~of the licensee~~ resulting from industrial hemp research.
- D. Restrictions.
  - 1. \_\_\_\_\_ A licensee shall not change not-for-profit research to for-profit research without notifying the Department and paying the required licensing fee.
  - 2. Hemp and hemp products produced under a hemp research exemption, excluding hemp seed, are not eligible to enter the commercial stream of commerce.

**R3-4-1005. Fees**

- A. All licensing ~~and/or registration~~ fees are due at the time of application.
- B. A ~~Grower-grower~~ applicant or licensee is not required to pay separate harvester ~~and/or~~ transporter licensing fees, unless providing harvesting ~~and/or~~ transport services for other licensed growers.
- C. Inspection and assessment fees are invoiced by the Department and are due within 30 calendar days of the invoice date.
- D. Site modification fees. The appropriate fee shall be submitted at the time an applicant submits a site modification application as provided in R3-4-1003(G)
- E. Processor ~~Assessment~~ assessment fees are based on tonnage reports, shipping manifests or scale receipts of unprocessed hemp plants or plant parts received.
- F. All outstanding ~~Inspection~~ inspection and ~~Assessment~~ assessment fees invoiced prior to November 15<sup>th</sup>, shall be paid in full prior to the Department's processing of a licensee's renewal application.
- G. THC sample analysis fees. Beyond the initial pre-harvest sample collected to determine regulatory compliance of a harvest lot of hemp, a licensee will be invoiced required to pay for any analytical fees before results are released, beyond the samples selected to determine regulatory compliance. These include:
  - 1. Any pre-harvest ~~re-samples~~ re-tests for crops that indicated a result above the threshold for compliance;
  - 2. Post-harvest samples that have been determined to be a regulatory concern by the Department; or
  - 3. By request from the grower that requires official analysis for commerce.

**Table 1. Fee Schedule**

License	Licensing Fee	Inspection/Assessment Fee
Grower	<del>\$1,500</del> <u>\$1,000</u> per license	\$25 per <u>one or less than one</u> outdoor acre up to 100 acres

		\$5 acre for each additional acre  \$75 per indoor facility up to 3 acres; \$25 per acre for facilities over 3 acres  \$150 per THC sample analysis (G) <del>\$150 per THC sample analysis (G)</del>
Nursery	<del>\$1,000</del> \$650 per license	NA
Harvester	<del>\$150</del> \$100 per license	N/A
Transporter	<del>\$150</del> \$100 per license	N/A
Processor	<del>\$3,000</del> \$2,000 per license	<del>\$0.5 ton Fiber</del>  \$5 ton Oil Seed/Grain  \$100 ton floral material  \$150 per THC sample analysis (G)
All	Site modification fee: \$300	N/A

**R3-4-1006. Authorized Seed and Propagative Material**

A. Authorized seeds and propagative material. Seeds and propagative materials authorized for use by a licensee is not a guarantee a crop will produce a ~~Total Delta~~total delta-9 THC concentration of not greater than 0.300%. Seeds and propagative material that are used to produce an industrial hemp crop or plant shall:

1. Be produced from an industrial hemp crop or plant; and
2. Originate from either:
  - a. A person, business, college or university licensed or certified in a state or federal program authorized to produce industrial hemp; or
  - b. A foreign source that is authorized by the country of origin to export industrial hemp seed or propagative material to produce an industrial hemp crop.

B. Each licensed grower or nursery is responsible for the acquisition of seed or propagative materials used for the growth of industrial hemp. The licensee shall ~~provide the Department the following information prior to planting~~ keep and maintain the following information:

1. A copy of the seed or propagative material producer's certificate, license or equivalent documentation authorizing the production of industrial hemp;
2. An official analysis of the crop or plant that produced the seed or propagative material that indicates the crop or plant contained a ~~Total Delta~~total delta-9 THC concentration of not greater than 0.300% on a dry weight basis; and
3. Phytosanitary certificates or nursery certificates issued by a plant regulatory official for any propagative materials to ensure compliance with A.R.S. § 3-211 and ~~3 A.A.C. 2; and Title 3, Chapter 4, Article 2 of the Arizona Administrative Code.~~
4. ~~A pre-planting report, on a form provided by the Department, which includes:~~
  - a. ~~The variety/strain name of the material;~~
  - b. ~~The amount or quantity of the material;~~
  - c. ~~The lot number(s) of the material; and~~
  - d. ~~The name, address, phone number and email address of the seed or propagative material provider.~~

C. Labeling requirements. All Industrial Hemp seed or propagative material sold within or into Arizona must be labeled as to

variety/strain or hybrid name, and origin. ~~Labelers of seed or propagative material must provide to the Department, breeder descriptions and variety release information including any subsequent updates/amendments to these descriptions.~~

1. For purposes of labeling, the number or other designations of hybrid industrial hemp shall be used as a variety name.
2. All Industrial Hemp seed for planting purposes sold within or into Arizona is subject to the Arizona seed laws under A.R.S. §§ 3-231 ~~et seq.~~ et seq. and ~~3 A.A.C. 4~~ 3 A.A.C. 4 Title 3, Chapter 4, Article 4 of the Arizona Administrative Code.

**D. Shipment of hemp plants for planting purposes.**

1. Hemp plants for planting purposes produced by a licensed nursery for intrastate or interstate shipment shall:
  - a. Have been produced from authorized hemp material as indicated in R3-4-1006(A);
  - b. Have been produced in compliance with the laws, rules and order of the Director for the production of industrial hemp;
  - c. Be transported with a copy of the nursery producer license; a copy of the receiving grower license; and a manifest or bill of lading indicating the amount in the shipment and physical destination of the shipment; and
  - d. Only be sold or distributed to an entity or individual licensed to produce hemp.
2. Hemp plants produced by a licensed nursery for the interstate shipment of hemp plants for planting purposes shall, in addition to the requirements in R3-4-1006(D)(1):
  - a. Be accompanied by a certificate issued by the Department that attests the material was produced in compliance with laws, rules and orders of the Director regulating the production of industrial hemp in the state; and
  - b. Ensure compliance with all plant quarantine requirements of the destination state and certification as indicated in R3-4-301 as applicable.

**~~D~~.E. Restrictions.**

1. A person that receives seed or propagative materials that does not comply with this Article or any other phytosanitary, seed or labeling law of the state shall immediately notify the Department and hold the seed or propagative material until a disposition is provided by the Department.
2. The Department may direct a licensee to place a shipment of seed or propagative material on hold to ensure compliance with this Article and any other law or regulation that may apply to the shipment of agricultural seed and plants for planting purposes.

**R3-4-1007. Location Requirements; Signage**

**A. Location requirements.**

1. A Licensed ~~Grower-grower~~ or ~~Processor-processor~~ shall not grow, process, or store industrial hemp in any residential dwelling.
2. A Licensee is responsible for maintaining compliance with all applicable city and county land use restrictions, zoning laws, building, and fire codes and ordinances.
3. A registered location shall be made available for inspection at the request of an inspector during normal business hours.
4. A licensed grower or processor shall not grow, process, or store any forms of Cannabis that are not classified as industrial hemp within a single structure at the registered location.

**B. Signage. The use of the Arizona Department of Agriculture logo or likeness is not permitted on signage. A licensed grower or processor shall conspicuously post signage at the perimeter of the registered location that includes the following information:**

1. The statement, "Arizona Department of Agriculture Industrial Hemp Program - No Trespassing Allowed";
2. Licensee's name or company name and license number; and
3. The Arizona Department of Agriculture, Industrial Hemp Program phone number.

**R3-4-1008. Compliance; Recordkeeping; Audits**

**A. General compliance requirements.**

1. All licensees are subject to audits to ensure compliance with the recordkeeping requirements in ~~subsection~~ R3-4-1008(B);
2. An authorized Department inspector shall be allowed access to all growing, storage, and processing locations of a licensee's industrial hemp crop, hemp seed, propagative material, harvested material, handling and processing equipment to conduct a visual inspection and determine if a violation of this Article may exist.

**B.** Recordkeeping. All licensees may be audited to ensure compliance with all recordkeeping requirements. A licensee shall comply with the recordkeeping requirements in this subsection at a minimum. Additional recordkeeping requirements may be established as set ~~in~~ by policy and updated annually.

1. All records documenting the geospatial location, growth, propagation, harvesting, storage, agronomic data, shipping, receiving, transportation, distribution, processing, sale, purchase, third party analysis or research of all plants, seeds and materials shall be kept within the state of Arizona and made available for inspection on request.
2. An in-state agent must be maintained for receipt and storage of records.
3. All records shall be maintained for not less than five years.

**C.** Sampling and testing. All licensees are subject to the collection of a representative sample of any *Cannabis* plant, hemp crop or harvested hemp in possession of the licensee or licensee's agent to determine the total concentration of ~~Delta~~ delta-9 THC as reported by a certified laboratory to ensure compliance with this Article and any state or federal law, rule or order regulating *Cannabis* as an agricultural commodity. Unless otherwise specified in an alternative performance based sampling policy, crops shall be sampled within 30 days prior to the intended date of harvest and samples must be collected from mature flowering plants. All sampling agents must have undergone official sampling training by an authorized representative of the Department for the collection of cannabis samples for determination of compliance with the program. A licensed grower shall not harvest an industrial hemp crop prior to the collection of an official sample for compliance purposes.

1. Sampling method. The Department shall publish a policy on the ~~methods~~ procedures used by the Department to sample in which a Cannabis a Cannabis plant or crop; may be sampled and may publish a policy or policies for alternative, performance-based methods that have the potential to ensure, at a 95% level of confidence, that the *Cannabis* plant or crop will not test above the acceptable hemp total delta-9 THC level, such policy or policies which may be updated annually as ~~needed~~ dictated by changing circumstances.

2. Only an authorized Department inspector, or other authorized sampling agent, may collect an official sample to determine compliance with this Article.

3. When collecting an official sample, an authorized Department inspector, or other authorized sampling agent, shall:

a. Ensure the licensee or authorized representative of the licensee is present during the collection of the official sample;

~~a-b.~~ Collect a representative sample of the crop, plants or harvested crop;

~~b-c.~~ Split the official sample as follows:

i. One-third for retention by the Department or to provide to a certified laboratory for compliance with this Article;

ii. One-third for confirmation of analytical results if required; and

iii. One-third that is provided to the licensee for retention or to utilize for additional analysis by a third party laboratory. Any results provided to the licensee by a third party laboratory do not supersede official results.

~~e-d.~~ Label all official samples with an official sample number, sample date, collector name, location ID, and grower license ID number;

~~e-c.~~ Apply official custody seals to all official samples; and

~~e-f.~~ Complete an official chain of custody form that is signed and dated by the inspector and licensee or the licensee's representative.

4. Sample transport and submission. The Department shall not be liable for samples that are detained by any federal, state or local law enforcement agency.

- a. If a certified laboratory receives a sample with a broken custody seal or incomplete or missing chain of custody, that sample shall be null and void;
- b. All official samples retained by the Department are the property of the Department; and
- c. The Department is not liable to reimburse the licensee for official samples collected.

5. Laboratory Standards. Certified laboratories conducting testing of hemp must conduct analytical testing for purposes of detecting the total calculable amount of delta-9 THC and shall meet the following standards:

- a. Laboratory quality assurance must ensure the validity and reliability of test results;
- b. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate and that the laboratory can successfully perform the testing;
- c. The demonstration of testing validity must ensure consistent and accurate analytical performance; and
- d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Article.
- e. At a minimum, analytical testing of samples for total calculable amount of delta-9 THC levels must use post-decarboxylation or other similarly reliable methods approved by the U.S. Secretary of Agriculture. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC). The test result must reflect the total calculable amount of delta-9 THC. Testing methodologies meeting these requirements include, but are not limited to, gas chromatography and high-performance liquid chromatography.
- f. The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.
- g. Certified laboratories must report the measurement of uncertainty (MU) of the methodology, in reference to the U.S. Department of Agriculture's Laboratory Testing Guidelines, U.S. Hemp Production Program, published on January 15, 2021, or its successor document in reference to the AOAC International (Association of Official Agricultural Chemists), Standard Method Performance Requirements (SMPRs®) for Quantitation of Cannabinoids in Plant Materials of Hemp (Low THC Varieties *Cannabis* sp.) SMPR 2019.003 found at the website: <https://www.aoac.org/resources/smpr-2019003/>. Certified laboratories must also report the MU as a  $\pm$  value and report the total delta-9 value in the same unit of measure used to report the MU.
- h. Any sample test result showing with at least 95% confidence that the total delta 9 THC content of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Article.

6. DEA Registration. Certified laboratories must also be registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13 no later than December 31, 2022.

~~5-7. Sample results. Any A copy of any result provided to the Department by a certified laboratory produced by a certified laboratory shall be provided to the licensee, but such result is the property of the state and a copy shall be provided to the licensee.~~

**D. ~~Volunteer hemp plants. It shall be the responsibility of the licensee to monitor and destroy.~~ Crop compliance.**

1. Compliant crops. When a crop is found to be compliant with the regulations governing the production of industrial hemp, a grower will be provided documentation authorizing the movement of the harvest lot. Upon receiving authorization from the Department the licensed grower shall not comingle the harvest lot with any other compliant or non-compliant harvest lot. The grower shall:

- a. Harvest the compliant harvest lot within 30 business days;
- b. Notify the Department if there is a delay in the 30 business day harvest window due to inclement weather or other natural causes; and
- c. Notify the Department prior to shipping or transporting the harvest lot as provided in section R3-4-1011(D).

2. Non-compliant crops. Non-compliant crops with a total delta-9 THC concentration greater than 0.3% shall not be allowed

into the stream of commerce. When a crop is found to be non-compliant with the regulations governing the production of industrial hemp, a grower will be required, within 15 business days of notification of non-compliance, to either voluntarily dispose of the crop by a method prescribed in R3-4-1013(F) and submit a notice of destruction R3-4-1011(E), together with supporting evidence of disposal. Alternatively the grower may submit a corrective action plan under R3-4-1013(D) to remediate the crop to achieve compliance with the regulations governing the production of industrial hemp. A corrective action plan may be issued by the Department, or if submitted by the grower, must be approved by the Department. A corrective action plan will only be approved if the total delta-9 THC concentration is greater than 0.3% and less than 1.0%. Failure to dispose of the crop or comply with approved corrective action plan may result in a notice of violation under R3-4-1012. Upon receiving a notification of non-compliance from the Department, the licensed grower shall not move or transport the non-compliant crop from the hemp site, unless otherwise permitted by the Department to remediate the crop. Non-compliant crops shall not be comingled with any other compliant or non-compliant harvest lot. Harvest lots with a total delta-9 THC concentration greater than 1.0% constitutes a violation and must be disposed of by method indicated in section R3-4-1013(F).

E. Volunteer hemp plants. It shall be the responsibility of the licensee to monitor and destroy volunteer hemp plants.

**R3-4-1011. Notifications; Reports**

- A. All notifications and reports for licensees shall be made on forms provided by the Department unless otherwise indicated in this section or as directed by the Associate Director.
- ~~B. Grower Licensees shall notify the Department of the following activity:~~
- ~~1. Notice of intent to harvest no less than 14 days prior to harvest;~~
  - ~~2. Intent to transport a harvested crop no less than 72 hours prior to shipment or transport;~~
  - ~~3. Notify the Department of any significant damage or destruction of a crop or harvested crop caused by natural or manmade causes within 48 hours of discovery of the damage or destruction.~~
  - ~~4. Notify the Department within 14 days if any change in business information including business name, address, contact information or responsible party.~~
- ~~C. Planting report. Within 7 days after planting, complete and submit a planting report that includes:~~
- ~~1. The Growers license number;~~
  - ~~2. The location(s) where a crop was planted (the "site"), expressed in GPS Coordinates and displayed on a map or aerial photo;~~
  - ~~3. The variety name(s) of each planting corresponding to the location indicated in subsection (C)(2); and~~
  - ~~4. The actual area planted of each site.~~
- B. Planting Report. Within five business days after planting a harvest lot of hemp, a grower must complete and submit a planting report that includes, at a minimum the following:
1. The contact information of the licensee, including license number;
  2. A unique harvest lot identification number assigned by the grower or nursery
  3. The geospatial location information where a harvest lot was planted (the "site");
  4. The variety name of the harvest lot;
  5. The actual area planted with each lot; and
  6. The estimated date of harvest or transplanting.
- C. Grower Notice of Intent to Harvest. Within 30 calendar days prior to harvest, a grower must complete and submit a Notice of Intent to Harvest form for each harvest lot to be sampled that includes, at a minimum the following:
1. The contact information of the grower, including license number;
  2. The unique harvest lot identification number assigned by the grower as initially indicated on the planting report;
  3. The geospatial location(s) information of the harvest lot to be sampled (the "site");

4. The variety name of the harvest lot;
5. The size of the area to be harvested; and
6. The intended date of harvest.

**D.** Notice of Intent to Transport. Within three business days prior to transporting a lot of harvested hemp for processing, a grower must complete and submit a Notice of Intent to Transport form for each harvest lot transported to a processor that includes, at a minimum the following:

1. The contact information of the grower, including license number;
2. The unique harvest lot identification number assigned by the grower as initially indicated on the planting report;
3. The geospatial location(s) information of the harvest lot to be transported;
4. The variety name of the harvest lot;
5. The amount of harvested hemp to be transported;
6. The intended date of transport; and
7. The contact information of the receiver.

**E.** Notice of Destruction. Within three calendar days after a grower has found a harvest lot significantly damaged, completely destroyed, or has disposed of a harvest lot, a grower must complete and submit a Notice of Destruction form that includes, at a minimum the following:

1. The contact information of the grower, including license number;
2. The unique harvest lot identification number assigned by the grower as initially indicated on the planting report;
3. The geospatial location(s) information of the harvest lot subject to damage, destruction, or disposal (the "site");
4. The variety name of the harvest lot;
5. The size of the area that was subject to damage, destruction, or disposal; and
6. The date the damage or destruction was discovered, or date of disposal.

**D.F.** Grower and nursery annual reports. By December 31<sup>st</sup> of each year, a grower or nursery shall provide the Department a report of the following:

1. The sale or distribution of any industrial hemp grown under the grower's license;
2. The name and address of the person or entity receiving the industrial hemp; and
3. The amount of the industrial hemp sold or distributed.

**E.G.** Processor notifications. A licensed processor shall notify the department of all shipments of industrial hemp imported from outside of the state for processing within 72 hours of receipt of the shipment. The notification shall include: All shipments of industrial hemp received into a processing facility must be reported to the Department.

1. For the importation of hemp material for processing, a licensed processor shall notify the department of the shipment, within three business days of receipt of the shipment. The notification shall include the following information:

- ~~1-a.~~ A copy of the shipping manifest that indicates the name, physical address, and phone number of the shipper, and the total weight of the hemp commodity in the shipment;
- ~~2-b.~~ A copy of the documentation issued by a regulatory official that attests the hemp commodity ~~contains a Total Delta-9 THC Concentration not greater than 0.300%~~ was produced with an acceptable concentration of total delta-9 THC;
- ~~3-c.~~ A copy of the industrial hemp grower's certificate, license or equivalent documentation authorizing the production of industrial hemp in that state; and
- ~~4-d.~~ A phytosanitary certificate, if required, ~~or~~ a certificate of inspection, or certificate of origin issued by a plant regulatory official; and

5. Documentation issued at origin that attests to the owner, origin, type and amount of hemp material in the shipment.

2. For the invoicing of processor assessment fees listed in Table 1, a notification shall be filed with the Department within 30

calendar days of receipt of the shipment(s) that contains the following information:

- a. The grower's license number;
- b. The harvest lot number issued by the Department or an authorizing state;
- c. The amount of material in the shipment; and
- d. The date the shipment was received.

F. Other notifications. A licensee shall notify the Department within ~~72 hours~~ three business days from receipt of results of any third party analysis that determined a hemp crop or plant sample contained a ~~Delta~~ total delta-9 THC concentration greater than ~~0.300%~~ 1.0%.

#### **R3-4-1012. Unauthorized Activity; Violations**

A. A licensee ~~shall have committed~~ commits a violation of this Article by:

1. Failing to provide a legal description of land on which a licensee grows, processes, stores or researches industrial hemp or hemp seed;
2. Failing to obtain the proper license with the Department;
3. Producing or distributing Cannabis sativa, with a total ~~Delta~~ delta-9 THC concentration greater than ~~0.300%~~ 1.0% on a dry weight basis, unless otherwise permitted by state or federal law, rule or order;
4. Violating a term or condition of the signed licensing agreement or corrective action plan; or
5. Violating any law, rule, or order in the regulation of industrial hemp.

B. False Statement. Any person who materially falsifies any information contained in an application to participate in the program established under this Article shall be ineligible to participate in the program.

C. No unauthorized person shall:

1. Grow, cultivate, handle, store, harvest, transport, import or process industrial hemp
2. Trespass on a property registered as an industrial hemp site;
3. Disturb, damage or destroy an industrial hemp plant or crop on a registered location; or
4. Tamper, damage or destroy posted signage as required under ~~R3-4-1008~~ R3-4-1007(B).

D. No authorized program licensee shall:

1. Offer for sale, trade, transfer possession of, gift, or otherwise relinquish possession of industrial hemp plants, plant parts, or hemp seed that is capable of germination to an unauthorized person;
2. Destroy an industrial hemp crop, stored industrial hemp or hemp seed without prior notification to the ~~Department.~~ Department; or
3. ~~Transport industrial hemp plants, seed, propagative material or unprocessed harvested industrial hemp without notifying the Department; or~~
4. ~~Import or export industrial hemp plants or plant parts for processing; or seed or propagative material for planting purposes, without notifying the Department and complying with all import or export regulatory requirements as determined by a regulatory official.~~

E. ~~Intentional or Knowing Violations.~~ Intentional, Knowing, or Negligent Violations. Any violation of state or federal law rule or order that is determined to be committed intentionally or knowingly ("culpable mental state greater than negligence") shall be reported to the State Attorney General, the U.S. Attorney General and any relevant state and local law enforcement agencies. Negligent violations are not subject to federal, state, tribal, or local government criminal enforcement action.

#### **R3-4-1013. Corrective Actions**

A. In addition to being subject to possible license suspension, license revocation, and monetary civil penalty procedures ~~set forth in~~

- ~~A.A.C.~~ under R3-4-1014, a person who is found by the Department to have violated any law, rule or Director's Order governing that person's participation in the program ~~shall~~ may be subject to a corrective action plan.
- B. The Associate Director may request that the licensee submit a corrective action plan, or may impose a written and dated corrective action plan for a negligent violation or non-compliance of any law, rule or Director's Order governing a person's participation in the hemp program.
- C. Corrective action plans ~~issued by the Department~~ shall include, at a minimum, the following information:
1. The requirements a person must fulfill to correct a violation or non-compliance of this Article as indicated in ~~subsection R3-4-1013(D);~~
  2. A reasonable date by which the person shall complete violation or non-compliance corrections; and
  3. For violations pursued under A.R.S. § 3-319, A requirement for periodic reports from the violator to the department about the violator's compliance with the corrective action plan, laws, rules or Director's Orders for a period of ~~at least three years not less than two years~~ from the date of the ~~corrective action plan violation.~~
- D. Corrective Action Plan. ~~The Department may prescribe one or more of the following provisions to a person in violation or non-compliance of this Article:~~
1. Hemp crops or harvested hemp shall not be removed from the licensee's registered hemp site if found ~~in violation of Section R3-4-1012 (A)(3) non-compliant~~ by having a ~~Total Delta~~ total delta-9 THC concentration of greater than 0.300%, but less than 1.0% on a dry weight ~~basis. basis, unless granted authorization by the Associate Director to complete the measures in an approved corrective action plan.~~
  2. In addition to one or more of the components listed in A.R.S. § 3-317, ~~a corrective action plan may contain one or more of the requirements~~ the Department may prescribe one or more of the following actions as part of a corrective action plan:
    - a. Stripping stalks and ~~destruction~~ disposal of floral material;
    - b. Sterilization of seed and ~~destruction~~ disposal of floral material;
    - c. THC remediation of leaf and floral material as prescribed by the Associate Director;
    - d. Blending and milling of the entire plant/crop to a homogenized state, then resampled for compliance;
    - ~~e. \_\_\_\_\_ Education and training; and/or~~ and
    - e.f. \_\_\_\_\_ Other corrective measures prescribed by the Associate Director
  3. Failure to complete the prescribed corrective measure within the timeframe indicated in the corrective action plan or to complete any component of a corrective action plan shall constitute a second violation of this Article.
  4. The cost of implementing a corrective action plan is the burden of the licensee.
- E. Repeat negligent violations. A person that violates this Article, the laws governing the production of industrial hemp, or any order issued by the Associate Director three times in a five-year period shall be ineligible for an industrial hemp license ~~issued by the Department~~ for a period of five years beginning on the date of the third violation. All negligent violations within one year counts as one negligent violation.
- F. Methods of disposal. Disposal of any industrial hemp crop or plant, whether such disposal is pursuant to voluntarily action by the licensee or pursuant to a Department order of disposal, shall be accomplished by one or more of the following methods:
1. Plowing under;
  2. Mulching or composting;
  3. Disking;
  4. Bush Mower or chopper;
  5. Deep burial; and
  6. Burning or incinerating

**R3-4-1014. Penalties**

- A. Civil penalties. ~~A person that violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department within a five year period may be fined as follows:~~ Civil penalties shall be imposed under A.R.S. § 3-319.
1. ~~First offense - \$1,000~~
  2. ~~Second offense - \$2,500~~
  3. ~~Third offense - \$5000~~
- B. License suspension. A person that violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department may have their licensing privileges suspended until completion of any corrective actions prescribed in ~~Section~~ R3-4-1013.
- C. License revocation. A person that intentionally violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department, or who commits a third negligent offense within a five year period may be subject to one or more of the following penalties:
1. ~~Shall have~~ Revocation of all licenses issued pursuant to ~~under this Article~~ revoked;
  2. ~~All~~ Seizure and destruction of all hemp crops, seed, and harvested industrial hemp of the licensee ~~shall be seized and destroyed as prescribed by the Associate Director,~~ at the cost of the licensee; and
  3. ~~The person found in violation shall be responsible for the cost of the destruction of all hemp crops, seed, and harvested material; and~~
  4. ~~3.~~ The person in violation shall not be eligible Ineligibility for a license under this Article for a period not less than five years.
- D. Intentional or knowing violations committed by unlicensed individuals shall be punished according to A.R.S. §§ 3-319 and 13-3405 or 13-3405.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT  
TITLE 3. AGRICULTURE  
CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION  
ARTICLE 10. INDUSTRIAL HEMP

**Summary**

The statutory purpose of the industrial hemp program was to “improve the economy and agricultural vitality” of Arizona. The Department of Agriculture ("Department") bears minimal costs in implementing the industrial hemp program ("Program"). Other than the Department, no political subdivision is directly affected by the Program. Beneficiaries of the Program are hemp growers, nurseries, harvesters, transporters, and processors as well as customers for hemp products and the State of Arizona. In 2019, there were 359 Program licensees. Slightly less than half of those licensees were hemp growers. Licensing fees were reduced 33% overall at the end of 2020 under an Emergency rulemaking, with the intent to finalize the reduction in a later regular rulemaking. In view of this reduction, the impact to small businesses is minimal, and the benefits of the Program exceed the cost thereof. There are no less intrusive or less costly alternatives for administering the Program. All licensing fees are placed in the trust fund for the benefit of the Program and do not revert to the state general fund. Therefore, the Program has little or no effect on state revenues. Other changes in the proposed rulemaking are intended to align with federal regulations under 7 U.S.C.A. § 5940 and 7 U.S.C.A. § 1639o, *et seq.*, and any federal rules adopted thereunder. Alignment with federal regulations is necessary in order for Arizona to obtain U.S. Department of Agriculture (USDA) approval of Arizona's industrial hemp plan. USDA approval of this plan is beneficial to program stakeholders as it allows for eligibility for federal crop insurance and grants. Without USDA approval of the proposed rulemaking, these resources will not be made available to Arizona program participants. Lastly, proposed changes will make the rules clearer and more concise, to align with current departmental practices and to reduce overly-burdensome regulations.

**1. Identification of the proposed rulemaking.**

The proposed changes identified in the rulemaking include changes to rule R3-4-1001 to update and expand on definitions to further clarify terms in the article and reduce confusion with the regulated community and the public. Changes to rule R3-4-1002 include clarification of the eligibility requirement for criminal background checks to comply with federal regulations for the domestic production of industrial hemp. Changes to rule R3-4-1003 clarify and provide additional guidance

regarding the requirements and provisions to obtain a license and participate in the industrial hemp program, and to align terminologies with the federal regulations. The proposed change to rule R3-4-1004 is intended to clarify that hemp products produced under a research exemption are not allowed to enter the commercial stream of commerce. Changes to rule R3-4-1005 are intended to make the rule clearer and more concise, and to align with current Department practices. Changes to Table 1 include a reduction in licensing fees to reduce a burden on the regulated community and clarify language to indicate that the per-acreage inspection fee is for at least one acre that is inspected. Changes to rule R3-4-1006 ease reporting requirements that have been determined to be redundant and unnecessary and include guidance for a hemp-nursery license holder to facilitate movement of live planting material. Changes to rule R3-4-1007 add a provision to prohibit the use of the Department logo or its likeness on required signage. Changes to rule R3-4-1008 include:

- Provisions to implement alternative sampling methods.
- Clarification that a crop may not be harvested until a sample is collected
- A requirement that a representative of the licensee must be present at the time of sampling.
- Provisions for laboratory standards for the compliance testing of hemp crops.
- Guidance on how compliant and non-compliant crops are handled.

Changes to rule R3-4-1011 clarify what is required for program planting reports, intent to harvest reports, intent to transport notifications, notices of destruction and processor notifications. Changes to rule R3-4-1012 remove redundant hemp transportation notification language and clarify (intentional, knowing, and negligent) violations to comply with federal hemp laws. Changes to rule R3-4-1013 clarify the corrective action process and provide additional guidance on methods of crop disposal. Changes to rule 1014 clarify violations for non-licensed individuals.

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

Licensed industrial hemp growers, nurseries, harvesters, transporters and processors will directly benefit from the rulemaking with the reduction of licensing fees, and the increased opportunity to enter the industry. Other changes in the rulemaking will allow for compliance with federal law and approval a "State Hemp Plan" through USDA, allowing for possible eligibility for federal grants, crop insurance, and other federal assistance.

**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.**

The effect of the rulemaking will not require any additional full-time employees to the Department and there will be no additional costs for the implementation of the rulemaking since the Department has already implemented a program for the licensing and regulation of the production of industrial hemp.

- (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.**

There are no identified costs or benefits to any political subdivision of the state.

- (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.**

The rulemaking is not expected to effect revenues or payrolls for the regulated community. Businesses may benefit from the reduction of licensing fees and the increased potential to enter the industry and receive federal assistance.

- 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.**

It is not expected that employment in businesses, agencies, or political subdivisions will be directly affected by the rulemaking.

- 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.**

Small businesses could include a portion of the growers, nurseries, harvesters, transporters, or processors licensed by the Department to participate in the Program.

**(b) The administrative and other costs required for compliance with the proposed rule making.**

It is expected that there will be a decrease rather than an increase in administrative or other costs required for compliance associated with the proposed rulemaking.

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

The Department finds that the use of any method in section 41-1035 is not feasible since it would cause the Program to fall out of compliance with federal regulations for the domestic production of industrial hemp.

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

The proposed rulemaking does not infer any costs or benefits to private persons or consumers.

**6. A statement of the probable effect on state revenues.**

All fees generated from the licensing and oversight of Program licensees are placed in the industrial hemp trust fund for the benefit of the Program and do not revert to the state general fund. Therefore, the Program has little or no effect 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.**

There are no less intrusive or less costly alternatives for administering the Program.

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

Data from the Department's licensing statistics for calendar years 2019 and 2020, and budget expenditures out of the industrial hemp trust fund for fiscal year 2019 and 2020 were used to identify a suitable reduction of Program licensing fees in Table 1.

### 3-107. Organizational and administrative powers and duties of the director

#### A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

#### B. The director may:

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

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-313. Rulemaking; fees; intent

A. For the purposes of carrying out this article, the director shall:

1. Adopt rules pursuant to title 41, chapter 6 to oversee the licensing, production and management of industrial hemp and hemp seed in this state pursuant to this article.
2. Adopt fees by rule.
3. Authorize qualified applicants to propagate, harvest, transport or process, or any combination thereof, industrial hemp according to rules adopted by the director.

B. The legislature intends that the fees adopted pursuant to subsection A, paragraph 2 of this section be used to fund the department's activities in licensing, testing, inspecting and supervising industrial hemp production.

## **“Subtitle G—Hemp Production**

### **“SEC. 297A. DEFINITIONS.**

*“In this subtitle:*

*“(1) HEMP.—The term ‘hemp’ means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.*

*“(2) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).*

*“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.*

*“(4) STATE.—The term ‘State’ means—*

*“(A) a State;*

*“(B) the District of Columbia;*

*“(C) the Commonwealth of Puerto Rico; and*

*“(D) any other territory or possession of the United States.*

*“(5) STATE DEPARTMENT OF AGRICULTURE.—The term ‘State department of agriculture’ means the agency, commission, or department of a State government responsible for agriculture in the State.*

*“(6) TRIBAL GOVERNMENT.—The term ‘Tribal government’ means the governing body of an Indian tribe.*

### **“SEC. 297B. STATE AND TRIBAL PLANS.**

*“(a) SUBMISSION.—*

*“(1) IN GENERAL.—A State or Indian tribe desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian tribe shall submit to the Secretary, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian tribe monitors and regulates that production as described in paragraph (2).*

*“(2) CONTENTS.—A State or Tribal plan referred to in paragraph (1)—*

*“(A) shall only be required to include—*

*“(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;*

*“(ii) a procedure for testing, using postdecarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of*

*hemp produced in the State or territory of the Indian tribe;*

*“(iii) a procedure for the effective disposal of—*

*“(I) plants, whether growing or not, that are produced in violation of this subtitle; and*

*“(II) products derived from those plants;*

*“(iv) a procedure to comply with the enforcement procedures under subsection (e);*

*“(v) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle;*

*“(vi) a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received; and*

*“(vii) a certification that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi); and*

*“(B) may include any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle.*

*“(3) RELATION TO STATE AND TRIBAL LAW.—*

*“(A) NO PREEMPTION.—Nothing in this subsection preempts or limits any law of a State or Indian tribe that—*

*“(i) regulates the production of hemp; and*

*“(ii) is more stringent than this subtitle.*

*“(B) REFERENCES IN PLANS.—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.*

*“(b) APPROVAL.—*

*“(1) IN GENERAL.—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—*

*“(A) approve the State or Tribal plan if the State or Tribal plan complies with subsection (a); or*

*“(B) disapprove the State or Tribal plan only if the State or Tribal plan does not comply with subsection (a).*

*“(2) AMENDED PLANS.—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, may submit to the Secretary an amended State or Tribal plan that complies with subsection (a).*

*“(3) CONSULTATION.—The Secretary shall consult with the Attorney General in carrying out this subsection.*

*“(c) AUDIT OF STATE COMPLIANCE.—*

*“(1) IN GENERAL.—The Secretary may conduct an audit of the compliance of a State or Indian tribe with a State or Tribal plan approved under subsection (b).*

*“(2) NONCOMPLIANCE.—If the Secretary determines under an audit conducted under paragraph (1) that a State or Indian tribe is not materially in compliance with a State or Tribal plan—*

*“(A) the Secretary shall collaborate with the State or Indian tribe to develop a corrective action plan in the case of a first instance of noncompliance; and*

*“(B) the Secretary may revoke approval of the State or Tribal plan in the case of a second or subsequent instance of noncompliance.*

*“(d) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to a State or Indian tribe in the development of a State or Tribal plan under subsection (a).*

*“(e) VIOLATIONS.—*

*“(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.*

*“(2) NEGLIGENT VIOLATION.—*

*“(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—*

*“(i) failing to provide a legal description of land on which the producer produces hemp;*

*“(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or*

*“(iii) producing *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.*

*“(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—*

*“(i) a reasonable date by which the hemp producer shall correct the negligent violation; and*

*“(ii) a requirement that the hemp producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar*

years.

*“(C) RESULT OF NEGLIGENT VIOLATION.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) shall not as a result of that violation be subject to any criminal enforcement action by the Federal Government or any State government, Tribal government, or local government.*

*“(D) REPEAT VIOLATIONS.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.*

*“(3) OTHER VIOLATIONS.—*

*“(A) IN GENERAL.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—*

*“(i) the State department of agriculture or Tribal government, as applicable, shall immediately report the hemp producer to—*

*“(I) the Attorney General; and*

*“(II) the chief law enforcement officer of the State or Indian tribe, as applicable; and*

*“(ii) paragraph (1) of this subsection shall not apply to the violation.*

*“(B) FELONY.—*

*“(i) IN GENERAL.—Except as provided in clause (ii), any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of this subtitle shall be ineligible, during the 10-year period following the date of the conviction—*

*“(I) to participate in the program established under this section or section 297C; and*

*“(II) to produce hemp under any regulations or guidelines issued under section 297D(a).*

*“(ii) EXCEPTION.—Clause (i) shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before the date of enactment of this subtitle.*

*“(C) FALSE STATEMENT.—Any person who materially falsifies any information contained in an application to participate in the program established under this section shall be ineligible to participate in that program.*

*“(f) EFFECT.—Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe—*

*“(1) for which a State or Tribal plan is not approved under this section, if the production of hemp is in accordance with section 297C or other Federal laws (including regulations); and*

*“(2) if the production of hemp is not otherwise prohibited by the State or Indian tribe.*

**“SEC. 297C. DEPARTMENT OF AGRICULTURE.**

*“(a) DEPARTMENT OF AGRICULTURE PLAN.—*

*“(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian tribe shall be subject to a plan established by the Secretary to monitor and regulate that production in accordance with paragraph (2).*

*“(2) CONTENT.—A plan established by the Secretary under paragraph (1) shall include—*

*“(A) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;*

*“(B) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;*

*“(C) a procedure for the effective disposal of—*

*“(i) plants, whether growing or not, that are produced in violation of this subtitle; and*

*“(ii) products derived from those plants;*

*“(D) a procedure to comply with the enforcement procedures under subsection (c)(2);*

*“(E) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle; and*

*“(F) such other practices or procedures as the Secretary considers to be appropriate, to the extent that the practice or procedure is consistent with this subtitle.*

*“(b) LICENSING.—The Secretary shall establish a procedure to issue licenses to hemp producers in accordance with a plan established under subsection (a).*

*“(c) VIOLATIONS.—*

*“(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, it shall be unlawful to produce hemp in that State or the*

territory of that Indian tribe without a license issued by the Secretary under subsection (b).

“(2) *NEGLIGENT AND OTHER VIOLATIONS.*—A violation of a plan established under subsection (a) shall be subject to enforcement in accordance with paragraphs (2) and (3) of section 297B(e), except that the Secretary shall carry out that enforcement instead of a State department of agriculture or Tribal government.

“(3) *REPORTING TO ATTORNEY GENERAL.*—In the case of a State or Indian tribe covered by paragraph (1), the Secretary shall report the production of hemp without a license issued by the Secretary under subsection (b) to the Attorney General.

“(d) *INFORMATION SHARING FOR LAW ENFORCEMENT.*—

“(1) *IN GENERAL.*—The Secretary shall—

“(A) collect the information described in paragraph (2);  
And

“(B) make the information collected under subparagraph (A) accessible in real time to Federal, State, territorial, and local law enforcement.

“(2) *CONTENT.*—The information collected by the Secretary under paragraph (1) shall include—

“(A) contact information for each hemp producer in a State or the territory of an Indian tribe for which—

“(i) a State or Tribal plan is approved under section 297B(b); or

“(ii) a plan is established by the Secretary under this section;

“(B) a legal description of the land on which hemp is grown by each hemp producer described in subparagraph (A); and

“(C) for each hemp producer described in subparagraph (A)—

“(i) the status of—

“(I) a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

“(II) a license from the Secretary; and

“(ii) any changes to the status.

#### **“SEC. 297D. REGULATIONS AND GUIDELINES; EFFECT ON OTHER LAW.**

“(a) *PROMULGATION OF REGULATIONS AND GUIDELINES; REPORT.*—

“(1) *REGULATIONS AND GUIDELINES.*—

“(A) *IN GENERAL.*—The Secretary shall promulgate regulations and guidelines to implement this subtitle as expeditiously as practicable.

“(B) *CONSULTATION WITH ATTORNEY GENERAL.*—The Secretary shall consult with the Attorney General on the promulgation of regulations and guidelines under subparagraph (A).

*“(2) REPORT.—The Secretary shall annually submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing updates on the implementation of this subtitle.*

*“(b) AUTHORITY.—Subject to subsection (c)(3)(B), the Secretary shall have sole authority to promulgate Federal regulations and guidelines that relate to the production of hemp, including Federal regulations and guidelines that relate to the implementation of sections 297B and 297C.*

*“(c) EFFECT ON OTHER LAW.—Nothing in this subtitle shall affect or modify—*

*“(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);*

*“(2) section 351 of the Public Health Service Act (42 U.S.C. 262); or*

*“(3) the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services—*

*“(A) under—*

*“(i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or*

*“(ii) section 351 of the Public Health Service Act (42 U.S.C. 262); or*

*“(B) to promulgate Federal regulations and guidelines that relate to the production of hemp under the Act described in subparagraph (A)(i) or the section described in subparagraph (A)(ii).*

**“SEC. 297E. AUTHORIZATION OF APPROPRIATIONS.**

*“There are authorized to be appropriated such sums as are necessary to carry out this subtitle.”.*

**SEC. 10114. INTERSTATE COMMERCE.**

*(a) RULE OF CONSTRUCTION.—Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by section 10113)) or hemp products.*

*(b) TRANSPORTATION OF HEMP AND HEMP PRODUCTS.—No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.*

+++++

**(8) Hemp production**

The Senate amendment provision amends the Agricultural Marketing Act of 1946 to allow States to regulate hemp production based on a state or tribal plan. The amendment requires that such

plan includes information on locations of hemp production, testing for THC concentration, disposal of plants that are out of compliance, and negligence or other violations of the state or tribal plan. It requires the Secretary to establish a plan, in consultation with the U.S. Attorney General, for States and tribes without USDA approved plans to monitor and regulate hemp production. The section clarifies that nothing in this subtitle affects or modifies the Federal Food, Drug, and Cosmetic Act or authorities of the HHS Secretary and FDA Commissioner and clarifies that nothing in this title authorizes interference with the interstate commerce of hemp. (Sections 10111 & 10112)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with amendment, including auditing authority and a grandfather clause regarding program participation. (Sections 10113 and 10114)

In Sec. 297A, the Managers intend to clarify, within the hemp production subtitle, that hemp is defined as the plant *cannabis sativa* L, or any part of that plant, including seeds, derivatives, and extracts, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.

In Sec. 297B, the Managers intend to authorize states and tribal governments to submit a state plan to the Secretary for approval to have primary regulatory authority over the growing and production of hemp. The Managers do not intend to limit what states and tribal governments include in their state or tribal plan, as long as it is consistent with this subtitle. For example, states and tribal governments are authorized to put more restrictive parameters on the production of hemp, but are not authorized to alter the definition of hemp or put in place policies that are less restrictive than this title.

Within 60 days of receiving a state or tribal plan, the Secretary must approve or deny the plan. The Secretary is required to consult with the Attorney General regarding the approval or denial of state plans, but the Managers intend for the final decision to be made by the Secretary. The consultation with the Attorney General should not alter the 60 day requirement to approve or deny a plan. The Managers authorized the Secretary to audit state and tribal compliance with an approved plan and take corrective action, including revoking approval, based on a state or tribal government's noncompliance, as appropriate. The Managers intend to allow state and tribal governments to appeal decisions by the Secretary pertaining to a state or tribal plan for hemp production and do not intend to preclude a state or tribal government from resubmitting a new state or tribal plan for consideration at a later date. If a state or tribal plan is denied or revoked, the Managers intend for hemp production in that state or tribal area to fall under the Secretary's jurisdiction as authorized in section 297C.

The Secretary is authorized to provide technical assistance to states and Indian tribes to aid in the development of a state or tribal plan.

The Managers define negligent and other types of producer violations

that require enforcement under a state or tribal plan. The Managers also set limits on who may participate in state or tribal plans. Any person convicted of a felony relating to a controlled substance shall be ineligible to participate under the state or tribal plan for a 10-year period following the date of the conviction. However, this prohibition shall not apply to producers who have been lawfully participating in a state hemp pilot program as authorized by the Agricultural Act of 2014, prior to enactment of this subtitle. Subsequent felony convictions after the date of enactment of this subtitle will trigger a 10-year nonparticipation period regardless of whether the producer participated in the pilot program authorized in 2014. Additionally, anyone who materially falsifies any information in their application to participate in hemp production through a state, tribal, or USDA plan shall be ineligible.

In Sec. 297C, the Managers intend to require the Secretary to develop a USDA plan or plans to be implemented in states and tribal territories that forego developing and submitting a state or tribal hemp production plan. The Managers expect the USDA plan or plans to meet the same content requirements as state and tribal plans in Sec. 297B. The USDA plan may contain, as determined by the Secretary, additional practices and procedures that are otherwise consistent with this subtitle. It is the Managers intent that the Secretary have discretion regarding the appropriate number of plans, one or more than one, needed to implement Sec. 297C.

The Managers require the Secretary to collect, maintain, and make accessible to Federal, state, territorial, and local law enforcement, real-time information regarding the status of a license or other authorization for all hemp producers, whether participating under a state, tribal, or USDA plan. The Managers encourage the Secretary to develop a memorandum of understanding with Federal law enforcement agencies to define the parameters of this system and to potentially share the costs of such information sharing system. In Sec. 297D, the Managers clarify that the Secretary has the sole authority to issue guidelines and regulations regarding the production of hemp. However, nothing in this subtitle shall affect or modify the authority granted to the Food and Drug Administration and the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262), including for hemp-derived products. The Secretary is required to consult with the Attorney General on the promulgation of regulations, but ultimately, the regulations shall only be issued by the Secretary of Agriculture. To ensure that the Secretary moves forward with issuing regulations in as timely a fashion as possible, the Secretary shall periodically report to Congress with updates regarding implementation of this title.

While states and Indian tribes may limit the production and sale of hemp and hemp products within their borders, the Managers, in Sec. 10112, agreed to not allow such states and Indian tribes to limit the transportation or shipment of hemp or hemp products through the state or Indian territory.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 990**

[Doc. No. AMS–SC–19–0042; SC19–990–2 FR]

**Establishment of a Domestic Hemp Production Program**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This final rule supersedes the interim final rule that established the Domestic Hemp Production Program, as mandated by the Agriculture Improvement Act of 2018 (2018 Farm Bill). This rule includes regulations used by the Department of Agriculture (USDA) to approve plans submitted by States and Indian Tribes for the domestic production of hemp. This rule also includes regulations on the Federal hemp production plan for producers in States or territories of Indian Tribes that do not have their own USDA-approved plans. The program provides requirements for maintaining records about the land where hemp is produced, testing the levels of total delta-9 tetrahydrocannabinol, disposing of non-compliant plants, licensing hemp producers, and ensuring compliance under the new program.

**DATES:** This rule is effective March 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Bill Richmond, Branch Chief, U.S. Domestic Hemp Production Program, Specialty Crops Program, AMS, USDA; 1400 Independence Ave. SW, Stop 0237, Washington, DC, 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [William.Richmond@usda.gov](mailto:William.Richmond@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the authority of section 10113 of the 2018 Farm Bill (Pub. L. 115–334; December 20, 2018), which amended the Agricultural Marketing Act of 1946, as previously amended (7 U.S.C. 1621 *et seq.*) (AMA), by adding Subtitle G (sections 297A through 297E). Section 297B of the AMA requires the Secretary of Agriculture (Secretary) to evaluate and approve or disapprove State or Tribal plans regulating the production of hemp. Section 297C of the AMA requires the Secretary to establish a Federal plan for producers in States and territories of Indian Tribes not covered by plans approved under section 297B. Section 297D of the AMA requires the Secretary to promulgate regulations and

guidelines relating to the production of hemp under sections 297B and 297C in consultation with the U.S. Attorney General.

AMS issued an interim final rule (IFR) on October 31, 2019 (84 FR 58522), and began its initial implementation of the program. To date, USDA has approved approximately 45 State and Tribal hemp plans. However, not all of the States and Tribes have implemented their plans for various reasons, including the need to take additional steps to complete State legislative or rulemaking processes or to establish the regulatory scheme as well as the extension of the 2014 Farm Bill Program. Thus, as of November 2020, twenty States and nine Tribes have submitted reports on their respective programs. Based on the reports submitted by States and Tribes in 2020, producers have planted 6,166 acres under the 2018 Farm Bill hemp plans, of which approximately 730 acres were subject to disposal.

As of the effective date of this final rule, the interim final rule is superseded. This final rule replaces the IFR at 7 CFR part 990, effective March 22, 2021. The Agricultural Marketing Service (AMS), which has been delegated authority to administer the U.S. Domestic Hemp Production Program, provided multiple opportunities for public comment. AMS accepted comments during an initial comment period from October 31, 2019, through December 31, 2019. This initial comment period was extended for an additional 30 days on December 18, 2019 (84 FR 69295), ending January 29, 2020. AMS reopened the comment period for 30 additional days on September 8, 2020 (85 FR 55363), ending October 8, 2020. A total of approximately 5,900 comments were received during all comment periods from States; Indian Tribes; industry and agricultural organizations; private citizens; members of Congress, the scientific community; agencies; and individuals involved in the growing, processing, transporting and marketing of hemp. A summary of the public comments received and AMS’s responses appear under “Comment Analysis” in section IX of this document.

**I. Introduction**

Hemp is a commodity with numerous industrial and horticultural uses including fabric, paper, construction materials, food products, cosmetics, production of cannabinoids (such as cannabidiol or CBD), and other

products.<sup>1</sup> While hemp was produced previously in the United States (U.S.) for hundreds of years, its use diminished in favor of alternatives. Hemp fiber, for instance, which had been used to make rope and clothing, was replaced by less expensive jute and abaca imported from Asia. Rope made from these materials was lighter, more buoyant, and more resistant to saltwater than hemp rope, which required tarring. Improvements in technology further contributed to the decline in hemp use. The cotton gin, for example, simplified the processing of cotton, which replaced hemp in the manufacture of textiles.

The hemp industry continued in the U.S. until the Marihuana Tax Act of 1938. This Act ended the legal production of hemp in the United States, and hemp was added to Schedule I of the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.* Prior to the 2018 Farm Bill, all *Cannabis sativa* L., regardless of delta-9 tetrahydrocannabinol (THC) concentration level, fell within the CSA definition of “marihuana” unless the product fell under a narrow range of exceptions (*e.g.*, the “mature stalks” of the plant).<sup>2</sup> As a result, many aspects of domestic production of what is now defined as hemp was limited to persons registered under the CSA to do so.

Under the Agricultural Act of 2014 (2014 Farm Bill), Public Law 113–79, State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes. The authority for hemp production provided in the 2014 Farm Bill was extended until January 1, 2022, by the Continuing Appropriations Act, 2021, and Other Extensions Act (Pub. L. 116–260) (2021 Continuing Appropriations Act).

Hemp production in the U.S. has seen a resurgence in the last several years.

Since importation of seed is covered under USDA’s Animal and Plant Health Inspection Service (APHIS) regulations, this final rule does not regulate hemp

<sup>1</sup> Section 297D(c) of the AMA explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to promulgate regulations and guidance related to the production of hemp under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) (FD&C Act) and section 351 of the Public Health Service Act (42 U.S.C. 262) (PHS Act). See section 297D(c)(1) (“Nothing in this subchapter shall affect or modify . . . the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); section 351 of the Public Health Service Act (42 U.S.C. 262); or the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services . . .” under those Acts).

<sup>2</sup> Although the statutory spelling is “marihuana” in the Controlled Substances Act, this rule uses the more commonly used spelling of marijuana.

seed imports. APHIS regulates the importation of all seeds for planting to ensure safe agricultural trade. Hemp seeds can be imported into the U.S. from Canada if accompanied by either: (1) A phytosanitary certification from Canada's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or (2) a Federal Seed Analysis Certificate (SAC, PPQ Form 925) for hemp seeds grown in Canada. Hemp seeds imported into the U.S. from countries other than Canada may be accompanied by a phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected.

This final rule does not address the exportation of hemp. Should there be sufficient public interest in exporting hemp in the future, USDA will work with industry and other Federal agencies to help facilitate this process.

The 2018 Farm Bill requires USDA to promulgate regulations and guidelines to establish and administer a program for the production of hemp in the United States. Under this new authority, a State or Indian Tribe that wants to have primary regulatory authority over the production of hemp in that State or territory of that Indian Tribe may submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. For States or Indian Tribes without an approved plan, the Secretary is directed to establish a Departmental plan to monitor and regulate hemp production in those areas.

The 2018 Farm Bill specifies requirements that all hemp producers must meet. These include licensing requirements; recordkeeping requirements for maintaining information about the land where hemp is produced; procedures for testing the THC concentration levels for hemp; procedures for disposing of non-compliant plants; compliance provisions; and procedures for handling violations.

For the purposes of 7 CFR part 990, and as defined in the 2018 Farm Bill, the term "hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Delta-9 tetrahydrocannabinol, or THC, is the primary intoxicating component of cannabis. Cannabis with a THC level exceeding 0.3 percent is considered

marijuana, which remains classified as a Schedule I controlled substance regulated by the Drug Enforcement Administration (DEA) under the CSA.

The term "State" means any of one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. The term "Indian Tribe" or "Tribe" has the same definition as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). This final rule also includes the definition of "territory of an Indian Tribe" to provide clarity to the term because the AMA does not define it. The final rule defines "territory of the Indian Tribe" as (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction. Under an approved Tribal plan, the Indian Tribe will have regulatory authority over hemp production within its Territory.<sup>3</sup> A full list of terms and definitions relating to part 990 can be found under "Definitions" in section IV.

This rule is divided into several sections. The first section provides a general introduction to the rule. This section does not go into a detailed description of all parts of the rule or about the provisions of the rule that are discussed later on in other sections. Sections for State and Tribal plans as well as the USDA plan contain general information on land use, tribal jurisdiction authority, sampling, testing, disposal and remediation, compliance provisions, information sharing, certification of resources, and State and Tribal plan approvals. The USDA

<sup>3</sup> We note that if an Alaskan Native Corporation wants to produce hemp on land it owns in fee simple, it would need to have a State or USDA license, whichever is applicable, because that land does not qualify as Indian Country and the Corporation does not have jurisdiction over that land.

section also includes USDA hemp license provisions and suspension. These two sections provide general provisions that are discussed in more detail in the comment analysis section. Sections containing definitions, severability and the regulatory analysis are included before the regulatory language. The reader may be best served by reading the comment section to determine the changes made to this rule.

## II. State and Tribal Plans

Section 297B (7 U.S.C. 1639p) of the AMA requires that States or Indian Tribes seeking primary regulatory authority over the production of hemp in that State or territory of that Indian Tribe, submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. State or Tribal plans must be submitted to USDA and approved prior to their implementation. Nothing preempts or limits any law of a State or Tribe that regulates the production of hemp and is more stringent than the provisions in Subtitle G of the AMA.

AMS received extensive public input on the regulatory requirements for State and Tribal hemp plans. Incorporating the input received, the following sections explain the changes to the regulatory requirements for State and Tribal hemp plans.

### A. Land Used for Production

The 2018 Farm Bill and the IFR required that plans include a process by which relevant information regarding the land used for hemp production in their jurisdiction is collected and maintained. Certain information on mailing addresses and hemp production sites must be collected for each licensee covered by the State or Tribal plan.

The information required to be collected includes a legal description of the land and geospatial location for each field, greenhouse, or other site where hemp is produced. Geospatial location is necessary because many rural locations do not have specific addresses, and these coordinates will assist with the proper identification of hemp production locations.

In addition to the land information required to be collected by the appropriate State or Indian Tribe, AMS chose to require licensed producers, including those under the USDA plan, to report their hemp crop acreage to the Farm Service Agency (FSA). Although many commenters opposed this requirement based on costs around the time and travel expense necessary to physically visit the appropriate FSA County Office, AMS has determined that maintaining the FSA reporting

requirement is essential for several reasons. AMS recognizes that in some cases producers may travel to FSA offices miles away incurring additional time and cost. These costs are incorporated in the expected burden of this program.

First, USDA is statutorily required to provide law enforcement with certain “real-time” information about who is growing hemp, whether their license is in good standing with the regulatory body issuing the license, and the location(s) where hemp is being grown. Having FSA collect the necessary information enables USDA to provide the most accurate and “real-time” information to law enforcement, as required by Subtitle G of the AMA. Second, FSA offices serve as useful resources to all farmers and, in collaboration with other USDA agencies, can provide a wide range of insurance, risk management, and conservation program guidance and information. These offices currently serve the agricultural industry within their communities, where producers can establish farm and producer records, record their licensing information, and report crop acreage. The producer may also, with supporting documentation, update their FSA farm records for leases, sub-leases, or land ownership. Requiring farmers to visit the FSA office ensures that they receive information on the availability of these helpful tools and programs. This is particularly important for new farmers, who may not be aware of the wide range of programs and services offered by USDA.

Further, FSA maintains the technology necessary for data collection and geographical land identification. These tools will provide easy access to information needed for law enforcement and for other agricultural programs. AMS has determined, for these reasons, to continue to require the reporting of hemp crop acreage to FSA.

Based on input from commenters, USDA is also clarifying the distinction between the term “lot” as defined in the IFR, and the term “subfield” as it relates to FSA reporting. Although this final rule uses the term “lot” to discuss the land where hemp is grown, when a producer visits the FSA office to report hemp crop acreage, FSA staff will help producers determine the applicable FSA-specific term for designating the location(s) where hemp is being grown. The terminology used by FSA to denote land areas include terms like “farm,” “tract,” “field,” and “subfield,” which are equivalent to AMS’s term “lot.” FSA staff will not provide a “lot number” to producers as described in the IFR. FSA will use designations that they currently

use such as track, field, or subfield, depending on the specific area. This designation does not change the requirements or the information submitted for law enforcement. AMS will amend the form to reflect these terms. When reporting to FSA, producers must provide their State or Tribe-issued license or authorization number. A link to FSA information on how to report hemp crop acreage to FSA is available at <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/crop-acreage-reporting-19.pdf> and is available on the USDA hemp production program website.

As described in the IFR, certain State hemp pilot programs operating under the 2014 Farm Bill authority developed “seed certification” programs to help producers identify hemp strains with potentially lower THC concentrations. The term “certification” in this context means tested or verified, but it does not necessarily mean certified for varietal purity. USDA acknowledges that this remains a significant hurdle to the hemp industry and is committed to assisting with the research and development of compliant hemp varieties. Although AMS encourages States and Tribes to develop seed-certification programs if sufficient data is available, AMS has determined, at this time, that requiring the use of certain “compliant” varieties or establishing National rules for State-level certification programs is inappropriate. AMS will look at best practices from States and Tribes to evaluate if a program would be applicable to a USDA plan. If applicable, USDA may develop a performance-based sampling program. Such a program will require USDA to conduct rulemaking and comment procedures.

The term “seed certification,” as found in the Federal Seed Act and its Regulations, refers to a third-party verification process that assures seed customers that they are receiving pure varieties and high-quality seed for planting purposes. The Federal Seed Act grants authority to seed certifying agencies in each State to administer varietal seed certification standards for all major agricultural crops, including hemp. Recognized seed certifying agencies are members of the Association of Official Seed Certifying Agencies (AOSCA), and they administer uniform AOSCA standards and inspect crops being grown for seed throughout the production process to maintain varietal purity. These activities protect seed customers in both domestic and export markets. Seed produced under these types of certification programs ensure a

distinct, recognized variety that is properly tested and legally labeled. Seed certification under the Federal Seed Act is concerned with many varietal characteristics, not solely THC concentration. This enables farmers to confidently purchase seed of a suitable variety, by purchasing seed certified as to variety. Using certified seed, as described in the Federal Seed Act regulations and AOSCA standards, is an option for states and tribes if they have the data to support that the seed would work in their environment. While varietal certification does not absolutely ensure a specific THC content, the fact is that THC content (or at least a range) is a reliable varietal characteristic. Therefore, if the farmer is able to confidently purchase seed of a suitable variety by purchasing seed certified to variety, they at least know what to expect from the variety in their area.

For this reason, AMS recommends the use of hemp seed from varieties that have undergone varietal certification, following the process outlined in the Federal Seed Act Regulations, and produced following AOSCA standards. This recommendation will assist hemp farmers to purchase recognized hemp varieties that have been tested for purity and are properly labeled.

Additionally, AMS administers the Plant Variety Protection Office (PVPO) that is actively accepting applications of seed-propagated hemp for plant variety protection. The PVPO provides intellectual property protection to breeders of new varieties of seeds, tubers, and asexually reproduced plants. Under the U.S. Plant Variety Protection Act, PVPO examines new applications and grants certificates that protect varieties for 20 years (25 years for vines and trees). Certificate owners have rights to exclude others from marketing and selling their varieties, manage the use of their varieties by other breeders, and enjoy legal protection of their work. This work, however, does not certify seeds for THC content.

#### *B. Tribal Jurisdictional Authority*

The final rule clarifies the extent of a Tribe’s regulatory authority over hemp production within its Territory. Several commenters stated that language in the IFR raised uncertainty as to whether Indian Tribes could regulate hemp production by non-Indians operating on fee lands within a Tribe’s Territory. To address this uncertainty, § 990.4(b)(4) of the final rule now provides that “[u]pon USDA approval of a Tribal plan, a Tribe may exercise jurisdiction and therefore primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent

regulatory authority.” Thus, as long as the land at issue qualifies as land within the territory of an Indian Tribe under § 990.1 of the final rule, an Indian Tribe with a USDA-approved plan may regulate all hemp production on that land. USDA determined that this additional language is consistent with Congressional intent in the 2018 Farm Bill and best ensures that hemp production is managed consistently throughout the Territory of an Indian Tribe.

If an Indian Tribe desires to have primary regulatory authority over the production of hemp in its Territory, under the 2018 Farm Bill, the Tribe may submit a plan to USDA. Section 297C of the AMA provides that “In the case of a State or Indian Tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian Tribe shall be subject to a plan established by the Secretary to monitor and regulate that production.” Hence if a Tribe does not regulate hemp production within its Tribal Territory, USDA, not a State with an approved plan, will regulate hemp production program within that Territory.

Sections 297B and C plainly show that Congress chose to take a territorial approach to the Tribal regulation of hemp production under the AMA. If Congress only wanted Indian Tribes to assume primary regulatory authority over hemp production in areas within their inherent jurisdictional authority it could have stated this. Instead, Congress opted for a land-based approach and delegated to Tribes the authority to assume hemp production regulatory authority throughout their territories. In consideration of the statutory language and the overall statutory scheme of the 2018 Farm Bill, USDA has determined that an Indian Tribe with an approved plan may regulate hemp production throughout its territory without regard to the Indian Tribe’s ability to demonstrate inherent regulatory authority under the factors set forth in *Montana v. United States*, 450 U.S. 544 (1981). Because Congress did not define Territory of the Indian Tribe in the AMA and did not include discussion in the legislative history of the meaning of this term, USDA is exercising its authority to issue regulations to implement the provisions in the 2018 Farm Bill to define this term in this manner.

USDA’s decision is in-line with agency determinations where the agency determined that Congress delegated a Tribe with authority to exercise regulatory authority over non-Tribal fee land within reservations. EPA

Interpretive Rule: Revised Interpretation of Clean Water Act Tribal Provision, 81 FR 30183 (May 16, 2016); EPA Final Rule: Indian Tribes—Air Quality Planning and Management, 63 FR 7254 (Feb. 12, 1998); *Arizona Public Serv. Co. v. EPA*, 211 F.3d 1280 (D.C. Cir. 2000).

Moreover, USDA’s decision is practicable and prevents piecemeal licensing by Tribes and USDA within a single Tribal Territory. If a Tribe was only able to exercise primary regulatory authority over hemp production within its Territory when it could demonstrate the inherent authority to do so, USDA could be required to regulate some hemp production within the Territory—for example, it could foreseeably be required to regulate hemp production by non-Indians operating on fee lands in certain cases. Such a system would be confusing for producers and regulators alike.

For the foregoing reasons, the final rule now clearly explains that upon USDA approval of a Tribal plan, a Tribe may exercise primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent regulatory authority, as reflected in §§ 990.2 and 990.4 of the final rule.

### C. Sampling for Total THC

AMS is changing certain aspects of the sampling requirements. This section addresses performance-based sampling, how to sample hemp plants, sampling agents, and the harvest window after sampling takes place.

#### Sampling Requirements

AMS received significant input from commenters on how hemp sampling procedures and requirements should be changed. When referring to “sampling,” we mean the process of collecting cuttings from hemp plants for purposes of compliance testing.

#### Performance Based Sampling

The IFR required State and Tribal hemp programs to collect samples from the flower material of the cannabis plant. The IFR also required State and Tribal hemp programs to collect enough samples to ensure at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. Guidance issued concurrently with the IFR explained these requirements in greater detail. The sampling requirements in the IFR did not consider geography, environmental factors, State or Tribal level seed certification programs, or other factors faced by States and Tribes when developing sampling requirements for

their hemp programs. AMS is modifying the sampling provisions as presented in the IFR to allow States and Tribes to develop performance-based sampling requirements. Performance-based sampling achieves defined objectives and focuses on results. It differs significantly from a prescriptive action in which licensees are provided detailed direction on how those results are to be obtained. A performance-based approach would simply set a performance objective (e.g., reliability of 95 percent) and allow the States and Tribes considerable freedom in how to achieve that reliability objective with their sampling methodology.

Some State hemp regulators have successfully developed sampling requirements that ensure adherence to State and Federal regulations, while allowing for flexibilities due to limited State resources and State and Tribal differences. States expressed extensive concerns about the requirements in the IFR that all lots must be sampled and tested, due to significant logistical and fiscal impacts. They explained that, since most hemp in a given region is harvested at the same time, sampling must be completed within a very short time frame by only a few individuals. Several States also explained how sampling occurs under established State programs and described the different ways that perceived risk determines State requirements. Some States utilize different sampling requirements for broad end-use categories like “fiber/grain” hemp versus “cannabinoid” hemp, while others base their requirements on historical THC concentrations of certain varieties or on the characteristics and growing history of a certain farm or producer. While these States’ plans have not been approved under the 2018 Farm Bill regulations, we believe that providing States and Tribes the flexibility to develop sampling plans based on data they gather during an extended period of time may be an effective method at ensuring the overall acceptable hemp THC level of hemp grown in the State or Tribe. AMS agrees that sampling requirements should allow States and Indian Tribes more flexibility in the management of their hemp regulatory programs.

AMS agrees that requiring sampling from every lot may be burdensome and expensive for State and Tribal regulatory entities and producers. AMS also finds compelling the arguments presented by States’ regulatory agencies and other commenters that there are different risk factors for hemp used for fiber and grain versus hemp used for cannabinoids. Data submitted with

comments show that the THC levels of hemp used for cannabinoids are frequently higher than those of hemp for fiber and grain. The FDA authorizes the marketing of few types of cannabinoid products. This final rule does not cover cannabinoid products.

AMS also acknowledges that research institutions face special circumstances when conducting hemp research. Accordingly, this rule provides sampling and testing flexibility to these institutions and producers working with them to conduct hemp research. Producers that produce hemp for research, along with the research institution itself, must obtain a license from a State, Tribal Government, or USDA. However, the hemp that is produced for research is not subject to the same sampling requirements provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level. Research institutions and producers growing hemp for research purposes shall ensure the disposal of all non-compliant plants. Research institutions and producers growing hemp for research purposes shall also comply with the reporting requirements including reporting disposal of non-compliant plants. Research institutions that handle "hot" hemp must follow CSA requirements for handling marijuana.

States and Indian Tribes are allowed to develop performance-based requirements for these institutions. However, the alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level.

AMS views this flexibility as necessary to help support research and development as it relates to hemp production. This decision allows these types of research facilities and institutions to confidently oversee the study of hemp through trialing and genetics research, which AMS believes to be critical to the growth of industry, particularly in its infancy. Over time, the flexibility provided by this final rule will help to stabilize industry by providing greater understanding of hemp genetics and how certain varieties respond differently to growing conditions in various geographic locations. All producers are expected to benefit from such knowledge as they

will be made aware of the more stable and consistently reliable hemp varieties. Any non-compliant plants produced by research institutions as a result of research and development will still need to be disposed and verified through documentation. Research and development facilities are still required to be licensed by States and Tribes. Research institutions must follow licensing and reporting requirements.

In performance-based approaches, measurable or calculable parameters are available to determine whether the performance standard is met. These performance parameters are identified to provide measures of performance and the opportunity to take corrective action if performance is lacking. In the case of hemp, the performance parameter is the 0.3 percent THC level and other measures are included in this final rule if the parameter is not achieved such as disposal and remediation.

USDA finds that in order to increase regulatory effectiveness, it makes sense to allow States and Indian Tribes to consider performance-based alternatives when developing sampling plans. If the objective or intended result can be achieved by setting a readily measurable standard that is enforceable, the proposed requirement should merely specify the objective or result to be obtained rather than prescribe to the licensee how the objective or result is to be attained. In other words, requirements should be performance-based, and highly prescriptive rules and requirements should be avoided absent good cause to the contrary.

The sampling requirements for State and Tribal plans allow for States and Indian Tribes to develop unique sampling protocols for hemp growing facilities under their jurisdiction. Sampling protocols must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, the final rule allows States and Indian Tribes to adopt a performance-based sampling protocol. A performance-based protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level. USDA encourages the alternative protocol to consider seed certification processes or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe, whether the producer is conducting research on hemp at an institution of higher

learning, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors. AMS believes this will provide needed flexibility to States and Indian Tribes to develop logical and enforceable sampling requirements that take into consideration their unique circumstances. AMS will still require States and Indian Tribes to submit their individual sampling requirements for review as a component of the plan approval process. Sampling protocols submitted by States and Indian Tribes must comply with the thresholds established by the 2018 Farm Bill and this final rule. If performance-based sampling requirements are not included in a State or Tribal plan, the method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected from every lot, and thereby every producer must be sampled and tested. When evaluating sampling protocols submitted by States and Indian Tribes, USDA will evaluate the risk of producing non-compliant material to determine approval or disapproval. In evaluating the risk, USDA will take into consideration whether the performance-based factors the State or Indian Tribe used have the potential to assure compliance at a 95 percent confidence level.

Since USDA cannot develop performance metrics that would be applicable independently from where the producer is located, producers licensed under the USDA plan are subject to the sampling requirements in the rule. USDA guidelines provided on the USDA website at <https://www.ams.usda.gov/rules-regulations/hemp/information-sampling> describe best practices for complying with those requirements.

USDA recognizes that several States and Tribes may include performance-based sampling in their plans and that their experience could demonstrate that their sampling procedures may be adaptable to the USDA plan. If USDA finds this to be the case, USDA will explore a performance-based sampling scheme for producers under the USDA plan in the future through notice and comment rulemaking.

#### Where To Take Samples on the Hemp Plant

AMS will retain the requirement that pre-harvest samples be taken from the flower material of hemp plants. However, this rule clarifies the number

of inches of plant material needed for the sample and provides greater detail as to where exactly on the plant to make a cutting. The IFR required that samples be taken from the “flower material” of hemp plants. Further, in guidance material issued concurrently with the IFR, AMS explained in greater detail where exactly on the plant to make a cutting by recommending samples be taken from the top third of the plant, “just underneath a flowering material.” Many commenters argued that samples should be taken from the “whole plant” or that a “homogenized” sample should be taken to include the stem, stalk, leaves, and seeds along with flower material. Alternatively, some commenters proposed that samples be taken post-harvest from shredded whole plant material, otherwise known as “biomass.” Advocates of these positions asserted that THC levels of the whole hemp plant are better represented by samples collected from the entire plant, and not just from floral material. Other commenters advocated for sampling of a certain size or length of cutting. Such commenters advocated adoption of the sampling methods they or others had used under pilot programs. Many State agriculture departments suggested AMS continue to require samples taken from flower material.

Even though many commenters felt that whole plant sampling should be allowed, AMS is of the opinion that since THC is concentrated in the flower material of the plant, the flower material is more appropriate to test than the entire plant. AMS will modify the sampling requirement to state that the sample shall be approximately five to eight inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant. This change is consistent with the sampling practices in several States that established hemp programs pursuant to the 2014 Farm Bill authority. AMS determined that this standard strikes an appropriate balance between the need to collect a sufficiently large portion of the plant’s flower (where THC and other cannabinoids are at their most concentrated), and the need to avoid cutting a portion that is so large that it would be logistically difficult to transport, dry, and prepare for lab testing. Based on the information discussed above and the experience and expertise of States and other commenters already engaged in hemp production pursuant to the 2014 Farm

Bill authority, AMS is including new requirements herein.

AMS is publishing updated sampling guidance concurrently with this final rule. This guidance describes how to comply with this requirement regarding where to take the sample from the plant as well as other sampling requirements in the final rule. While the sampling guidance provides best practices for meeting the requirements, States, Indian Tribes, and USDA licensees may adopt sampling procedures that differ from the guidance so long as those procedures meet the standards in this final rule.

#### Sampling Agents

The IFR required a Federal, State, local, or Tribal law enforcement agency or other Federal, State, or Tribal designated person to collect hemp samples for the purposes of testing THC levels in hemp. Comments in response to the IFR presented several concepts concerning how sampling agents should be designated and/or trained. Comments mostly suggested the need for enhanced training requirements for sampling agents to promote consistency in the ways that samples are collected nationwide. Based on comments received regarding sampling agents, AMS will provide additional training resources for sampling agents. These training documents will explain how sampling agents can meet the sampling requirements of this regulation. States and Indian Tribes with an approved plan may require the sampling agents used in their jurisdiction to take the USDA training, or they may develop their own custom training incorporating USDA requirements with additional State or Tribal requirements. States and Tribes must maintain information, available to producers, about trained sampling agents.

Other comments on the topic of sampling agents spoke to the strain on State and Tribal resources of requiring agents to take samples instead of producers. Commenters presented two proposals to alleviate this strain—allowing producers to collect their own samples and reducing the volume of farms and plants from which samples are collected. AMS is retaining the requirement that only designated agents can collect samples. This ensures that there is consistency in sampling throughout the industry. The flexibilities provided to States and Indian Tribes with primary regulatory authority over hemp in their jurisdiction will likely reduce the number of samples required to be collected and thus reduce the burden on designated sampling agents.

#### Harvest Window

The IFR required harvest within 15 days of sampling. AMS received comments regarding the challenges presented by the 15-day harvest requirement, including the logistical challenges to State and Tribal agencies charged with overseeing the collection of samples in this short timeframe, the logistical challenges to producers in harvesting hemp crops in this short timeframe, and testing challenges faced by laboratories in having to conduct compliance analyses in this short timeframe. Commenters suggested lengthening the 15-day harvest requirement to a longer period of time—with some asking for up to 60 days.

AMS agrees with the arguments presented by commenters and recognizes the challenges imposed on the industry by the 15-day harvest requirement. AMS must also balance the logistical challenges of a harvest window requirement with the fact that THC concentration in hemp generally increases the longer the plant is in the ground. AMS now understands from data provided in comments that THC concentration does not increase linearly and is impacted by a myriad of environmental factors including moisture, wind, temperature, disease, sunlight, and soil, as discussed in the Comment Analysis section of this rule. The regulatory objective is to ensure, as best as possible, harmonization of the THC levels in the pre-harvest sample and that of the harvested material. Requiring that samples be taken prior to harvest is the best way to judge the THC concentration of the plant and the lot the sample represents. AMS recognizes that the most accurate measurement would be at time of harvest, but also understands the logistical practicalities discussed above and therefore has determined the most balanced approach is 30 days. For these reasons, AMS is expanding the window within hemp must be harvested after sampling to 30 days.

Under this final rule, no more than 30 days prior to the anticipated harvest of cannabis plants, a “sampling agent” must collect samples for compliance testing. If producers do not harvest within 30 days of sampling, the plant will likely have a higher THC level at harvest than the sample that is being tested. This requirement balances the need for accuracy with the logistical realities faced in the sampling and testing processes and will yield the most accurate measurement of the THC level at the point of harvest. Increasing the window within hemp must be harvested after sampling from 15 to 30 days will

better allow for variables such as testing, weather, agricultural practices, and equipment delays.

#### D. Testing Laboratories

The IFR introduced regulatory requirements for laboratories testing hemp for compliance purposes. AMS also issued guidance with the IFR to explain best practices for hemp testing laboratories ([www.ams.usda.gov/rules-regulations/hemp](http://www.ams.usda.gov/rules-regulations/hemp)). Based on comments to the IFR, AMS is changing certain parts of these regulations and updating the accompanying testing guideline. While the testing guidance provides best practices for meeting the regulatory requirements, States, Indian Tribes, and USDA licensees may use test procedures that differ from the guidance so long as those procedures meet the standards in the final rule.

#### Registration With DEA

The IFR required all hemp testing laboratories to be registered with the DEA in accordance with the CSA (21 U.S.C. 823(f)). On February 27, 2020, AMS announced a delay in enforcement of this requirement until October 31, 2020, or the publication of a final rule, whichever came first (USDA, DEA Provide Options for Labs, Disposal of Non-Compliant Hemp Plants, Thursday, Feb. 27, 2020)<sup>4</sup> AMS announced this enforcement delay to allow additional time to increase DEA registered analytical lab capacity and avoid potential delays to producers in receiving test results. Although AMS received comments in opposition to this requirement, AMS is retaining the requirement in this final rule that any laboratory testing hemp for purposes of regulatory compliance must be registered with DEA to conduct chemical analysis of controlled substances in accordance with 21 CFR 1301.13. This requirement also applies to any laboratory testing hemp throughout the growing season to informally monitor THC concentration. Registration is necessary because laboratories could potentially handle cannabis that tests above 0.3 percent THC on a dry weight basis, which is, by definition, marijuana and a Schedule 1 controlled substance. Instructions for laboratories to obtain DEA registration, along with a list of approved laboratories, are available on the USDA Domestic Hemp Production Program website. AMS is aware that there are still not enough DEA-registered hemp testing facilities in some States or

territories of Indian Tribes. However, since the IFR was published, numerous laboratories have applied for registration and DEA is working diligently to process these requests. Given the limited number of DEA-registered labs available to hemp producers, delay in enforcement of this requirement is continued until December 31, 2022. AMS anticipates this delay will provide adequate time for testing facilities to obtain DEA registration.

#### Laboratory Testing Requirements

Section 297B(a)(2)(A)(ii) of the AMA requires that State and Tribal plans for primary regulatory jurisdiction include a “procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian Tribe.” Since not all testing methods include decarboxylation, AMS is requiring that the total THC, which includes the potential conversion of tetrahydrocannabinolic acid (THCA) into THC, be reported and used for purposes of determining the THC content of a hemp sample.

The IFR included requirements on how laboratories conduct hemp testing for the purposes of regulatory compliance to assure that total THC levels were measured. Commenters provided extensive input on testing requirements, particularly the requirement to test for “total” THC instead of only “delta-9” THC. AMS is retaining this requirement.

AMS looked at current testing methodologies that would meet the decarboxylation requirement set in the 2018 Farm Bill. In gas chromatography (GC) testing, heat is applied to the sample, which decarboxylates THCA, producing delta-9 THC, so that the final delta-9 THC result is actually a total THC result. GC is the more traditional technique used for THC testing and was the technique used by Dr. Small<sup>5</sup> in his research that derived the 0.3 percent threshold that was used as a basis for the 2018 Farm Bill requirement and is used by law enforcement as the threshold to differentiate hemp from marijuana. In his research papers, the 0.3 percent threshold is based on *total available* delta-9 THC, which is the sum of THCA and delta-9 THC in the plant material.

Liquid chromatography (LC) testing does not involve the use of significant heat, so that the THCA in a sample does

not generally decarboxylate. Results can be reported for THCA and delta-9 THC separately. When LC is used, the total THC needs to be calculated post-testing in order to report results as a “post-decarboxylation” delta-9 THC value. The requirement to report the total THC value as the THC content regardless of testing methodology used ensures testing consistency across the program.

Samples must be tested using post-decarboxylation or other similarly reliable analytical methods by which the total THC concentration level reported accounts for the conversion of THCA into THC. Acceptable testing methodologies currently include gas or liquid chromatography with detection.

The total THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis. In order to provide flexibility to States and Tribes in administering their own hemp production programs, alternative testing protocols will be considered if they are comparable to and similarly reliable as the baseline mandated by section 297B(a)(2)(A)(ii) of the AMA and established under USDA regulations and procedures. Updated USDA procedures for sampling and testing will be issued concurrently with this rule and will be provided on the USDA website.

Reporting requirements for laboratories are discussed later in Section X (Regulatory Analysis) of this final rule. To clarify these requirements, laboratories conducting testing for purposes of monitoring THC concentration throughout the growing season are not subject to these reporting requirements. These tests are for the producer to monitor his or her production as it grows and not to comply with pre-harvest testing requirements in this rule. Only laboratories conducting the “final” test that will be used to determine whether a sample is compliant are subject to reporting requirements.

#### Measurement of Uncertainty

This final rule requires that laboratories calculate and include the Measurement of Uncertainty (MU) when they report THC test results. “Measurement of uncertainty” is defined as “the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.” This definition is based on the definition of “uncertainty (of measurement)” in section 2.2.3 of the Joint Committee for

<sup>4</sup> [www.ams.usda.gov/press-release/usda-dea-provide-options-labs-disposal-non-compliant-hemp-plants](http://www.ams.usda.gov/press-release/usda-dea-provide-options-labs-disposal-non-compliant-hemp-plants).

<sup>5</sup> Small, E.; Beckstead, H.D.; Chan, A. The Evolution of Cannabinoid Phenotypes in Cannabis. *Economic Botany*, 29, 219–232, 1975.

Guides in Metrology<sup>6</sup> 100:800, Evaluation of measurement data—“Guide to the Expression of Uncertainty in Measurement” (JCGM Guide). The National Institute of Standards and Technology (NIST) Technical Note 1297, “Guidelines for Evaluating and Expressing the Uncertainty of NIST Measurement Results” (TN 1297), is based on the JCGM Guide. AMS also relied on the Eurachem/Co-Operation on International Traceability in Analytical Chemistry’s “Guide on Use of Uncertainty Information in Compliance Assessment, First Edition 2007”. Colloquially, the measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as  $\pm$  with a number (e.g.  $\pm 0.05$ ), is combined with the reported measurement, it produces a range, and the actual measurement has a known probability of falling within that range (typically 95%). Laboratories should meet the AOAC International<sup>7</sup> standard method performance requirements for selecting an appropriate method to determine the MU.

This final rule requires that laboratories report the MU as part of any hemp test results. The rule also includes a definition of “acceptable hemp THC level” to account for the uncertainty in the test results. The reported THC concentration of a sample may not be the actual concentration level in the sample. However, the actual THC concentration is expected to be within the distribution or range calculated when the reported THC concentration is combined with the measurement of uncertainty.

The use of MU for purposes of determining the acceptable hemp THC level does not alter Federal law with regard to the definition of hemp or marijuana. As stated above, the 2018 Farm Bill defines hemp as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and

salts of isomers, whether growing or not, with a delta-9 THC of not more than 0.3 percent on a dry weight basis. Likewise, the Federal (CSA) definition of marijuana continues to include those parts of the cannabis plant as specified in 21 U.S.C. 802(16) (and derivatives thereof) that contain more than 0.3 percent THC on a dry weight basis. The foregoing provisions of Federal law remain in effect for purposes of Federal criminal prosecutions, as well as Federal, civil, and administrative proceedings arising under the CSA.

The definition of “acceptable hemp THC level” is also retained in this final rule. States and Indian Tribes shall adopt this concept in their plans. This definition explains how to interpret test results that include the MU with an example. The application of the MU to the reported delta-9 tetrahydrocannabinol concentration on a dry weight basis produces a distribution, or range. If 0.3 percent or less is within the distribution or range, then the sample will be considered to be hemp for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans. For example, if a laboratory reports a result as 0.35 percent with a measurement of uncertainty of  $\pm 0.06$ , the distribution or range is 0.29 percent to 0.41 percent. Because 0.3 percent is within that distribution or range, the sample, and the lot it represents, is considered hemp for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans. However, if the MU for that sample was 0.02 percent, the distribution or range is 0.33 percent to 0.37 percent. Because 0.3 percent or less is not within that distribution or range, the sample is not considered hemp for the purpose of plan compliance, and the lot it represents will be subject to disposal. Thus the “acceptable hemp THC level” is the application of the MU to the reported delta-9 tetrahydrocannabinol content on a dry weight basis producing a distribution or range that includes 0.3 percent or less. As such, the regulatory definition of “acceptable hemp THC level” describes how State, Tribal, and USDA plans must account for uncertainty in test results in their treatment of cannabis. This definition affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the CSA.

Sections 297B(a)(2)(A)(iii) and 297C(a)(2)(C) of the AMA require that cannabis plants that have a THC concentration level of greater than 0.3 percent on a dry weight basis be disposed of in accordance with the

applicable State, Tribal, or USDA plan. Because of this requirement, producers whose cannabis crop is not hemp will likely lose most of the economic value of their investment. Thus, AMS believes that there must be a high degree of certainty that the THC concentration level is accurately measured and is in fact above 0.3 percent on a dry weight basis before requiring disposal of the crop.

The NIST Reference on Constants, Units, and Uncertainty states that “measurement result is complete only when accompanied by a quantitative statement of its uncertainty. The uncertainty is required in order to decide if the result is adequate for its intended purpose and to ascertain if it is consistent with other similar results.”<sup>8</sup> Simply stated, knowing the measurement of uncertainty is necessary to evaluate the accuracy of test results.

Comments to the IFR generally expressed support for requiring that the measurement of uncertainty (MU) be accounted for when testing the THC concentration of hemp, due to the variability in laboratory testing equipment and complex mathematical principles involved. Comments also provided several suggestions on ways to improve the calculation of MU. Many comments advocated specifying an MU to create uniformity in testing across the nation.

USDA does not recommend establishing an MU upper limit (maximum) because (1) MU is typically not standardized, but is controlled using standard test methods, and (2) USDA does not have the data to set an upper limit so setting it would be arbitrary, not scientific. The hemp and scientific industries are just beginning to discuss standard test methods and the final rule does not establish an explicit test method. Setting an upper limit or maximum MU does not resolve the core issue and would not encourage or drive labs to improve accuracy and precision.

Setting an upper limit would in effect be setting a maximum or absolute MU. This may encourage labs to adopt the maximum MU as their MU, rather than drive for a smaller uncertainty. USDA may allow for establishing limits in the future, if needed, once methods are established and USDA has access to Proficiency Testing results and the reported MUs. We encourage States and Tribes to monitor, review and evaluate MU to evaluate trends and outliers, which may indicate “lab shopping” for higher MUs. The requirement for hemp

<sup>6</sup> The Joint Committee for Guides in Metrology is composed of international organizations working in the field of metrology. Its membership includes the Bureau International des Poids et Mesures, the Organisation Internationale de Métrologie Légale, the International Organization for Standardization, the International Electrotechnical Commission, the International Union of Pure and Applied Chemistry, the International Union of Pure and Applied Physics, the International Federation of Clinical Chemistry and Laboratory Medicine, and the International Laboratory Accreditation Cooperation.

<sup>7</sup> USDA established the Association of Official Agricultural Chemists in 1884. In 1965, it changed its name to the Association of Official Analytical Chemists and became an independent organization in 1979. In 1991, it adopted its current, legal name as AOAC International.

<sup>8</sup> <https://physics.nist.gov/cuu/Uncertainty/international1.html>.

testing laboratories to incorporate a MU is being retained in this regulation.

#### Laboratory Accreditation

In the IFR, AMS requested input on establishing a fee-for-service hemp laboratory approval process or a requirement for laboratories to obtain ISO 17025 accreditation for labs that wish to offer THC testing services. Comments reflected a range of views across the industry, both in support of and in opposition to additional laboratory certification requirements. In general, commenters preferred more regulatory flexibility to address the widespread concern of insufficient laboratory capacity as a result of laboratory certification/registration/accreditation requirements. Other commenters were opposed to accreditation requirements due to the cost. While AMS strongly encourages laboratories to be accredited to ISO/IEC 17025 (by an International Laboratory Accreditation Cooperation Mutual Recognition Agreement (ILAC MRA) signatory accreditation body), we also acknowledge that ISO 17025 accreditation requires significant time and financial commitment to pursue and maintain. The time and cost involved is most challenging for smaller and start-up labs. The initial accreditation can cost \$5,000–\$10,000 (and in some case more) and yearly ongoing costs are \$3,000–\$8,000. Smaller labs may not have the resources to pursue accreditation in a timely manner or they may have to spend additional time and money for consultants to assist them in setting up a quality management system and to navigate the application and audit processes.

Based on insufficient laboratory capacity at this time and the cost involved in adding this requirement, AMS will not provide an AMS administered lab approval program or require ISO 17025 accreditation. However, AMS remains committed to assisting the hemp laboratory testing community and is available to assist in the development of a laboratory approval program in the future. As explained in the IFR, if such hemp laboratory approval program is developed by AMS, such process will be conducted by USDA, AMS Laboratory Approval Service, which administers the Laboratory Approval Program (LAP). State and Tribal plans are free to include certain additional requirements for hemp testing laboratories, including ISO accreditation or other proficiency schemes.

#### *E. Disposal and Remediation of Non-Compliant Plants*

State and Tribal plans are currently required to include procedures for ensuring effective disposal or remediation of plants produced in violation of part 990. Plants that are removed as a result of poor plant health, pests, disease, or weather events, along with removal of male or hermaphrodite plants as part of a cross-pollination prevention plan, are not subject to the disposal requirements herein. This final rule retains the disposal requirements explained in the IFR but clarifies what “disposal” means and explains how the process must be conducted. This final rule also includes remediation as an option to remove non-compliant plants.

As explained in the IFR, if a producer grows cannabis exceeding the legal 0.3 percent THC level, the material must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under the CSA. The material must be collected for disposal by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, Tribal, or local law enforcement officer. In the final rule, AMS is incorporating flexibilities for disposal that were announced on February 27, 2020 (<https://www.ams.usda.gov/rules-regulations/hemp/enforcement>). Some of these new options include, but are not limited to, plowing under non-compliant plants, composting into “green manure” for use on the same land, tilling, disking, burial, or burning. These methods are intended to allow producers to apply common on-farm practices for the disposal of non-compliant plants. One of the top considerations in making this change was to minimize, to the extent possible, the resource impact to State, Tribal, and local law enforcement in handling hemp that is out of compliance. In addition, we are confident that any disposal options make the product unusable and therefore is not at risk for entering any streams of commerce. Based on comments received, AMS is permanently retaining these on-farm disposal flexibilities.

AMS received comments on this requirement describing the expense associated with destroying cannabis in accordance with the CSA, primarily the requirement that disposal be conducted offsite by a reverse distributor or other law enforcement officer. Based on this input, AMS, in coordination with DEA partners, delayed enforcement of the disposal requirements in the IFR. In the

final rule, producers have several options on how to handle non-compliant plants. Producers do not need to use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants. Producers may dispose of the plants using one or more of the means described by AMS at <https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities>. It is the Agency’s intent that these methods allow producers to apply common on-farm practices as a means of disposal while rendering the controlled substance non-retrievable or non-ingestible. Under this final rule, State and Tribal plans must still include procedures to verify disposal. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements the direct growers to provide pictures, videos, or other proof that disposal occurred successfully. Producers under the USDA plan must document the disposal of all non-compliant plants. States and Indian Tribes operating under approved hemp production plans and producers under the USDA plan must notify USDA of any occurrence of non-conforming plants or plant material and provide the disposal record of those plants and materials monthly.

State and Tribal plans must include procedures to verify disposal, whether through the use of in-person verification by State or Tribal representatives, or requirements for producers to provide pictures, videos, or other proof that disposal did in fact occur. State and Tribal plans must also include requirements to submit to AMS the monthly disposal and remediation report documenting any on-farm disposals or remediations that occurred during the prior month. As of November 2020, twenty States and nine Tribes operating under the 2018 Farm Bill reported 4,192 licensed producers representing 6,166 acres planted. Of these acres planted, there were 231 disposals representing 730 acres disposed due to not meeting the 0.3 percent acceptable hemp THC level.

AMS did not provide additional remediation options in the IFR. The only remediation alternative was to completely dispose of the non-compliant material. AMS is adding remediation to this final rule based on comment. AMS received many comments suggesting the inclusion of procedures to allow for non-compliant cannabis to be “remediated.” AMS agrees with this suggestion and is publishing remediation techniques concurrently with this rule that can be

followed to remediate non-compliant plant material into compliant form. As described in the IFR, hemp exceeding the acceptable THC level may not be further handled, processed, or enter the stream of commerce. AMS believes that hemp producers should have the opportunity to remediate non-compliant crops in order to minimize financial risk associated with the loss of investment in their hemp crop. For this reason, this final rule allows remediation activities, either disposing of flower materials and salvaging the remainder of the plant or blending the entire plant into biomass plant material. Through both forms of remediation, producers may be able to minimize losses, and in some cases produce a return on investment while ensuring that non-compliant material does not enter commerce.

If a producer elects to perform remediation activities as allowable under this final rule's provisions (referenced above), an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels. Only those successfully remediated crops will be allowed to enter the stream of commerce, and all other remaining non-compliant crops must then be disposed.

AMS believes the inclusion of remediation and post-harvest sampling into the final rule provides the additional flexibility requested by commenters that expressed the need for producers to have greater opportunity for success as established and beginning farmers entering hemp production.

#### *F. Compliance With Enforcement Procedures, Including Determination of Negligence and Annual Inspection of Hemp Producers*

The IFR required State and Tribal plans to include compliance procedures to ensure hemp was being produced in accordance with the requirements of this part. Comments to the IFR were generally opposed to the compliance requirements, particularly as they relate to the definition of negligence. Producers, along with State and Tribal regulatory agencies, found the negligence requirements in the IFR overly harsh and strict. This final rule changes these compliance procedures, particularly how "negligence" is determined. In the context of this regulation, negligence is defined as a failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulation. The definition employed in this rule is derived from the definition of negligence in Black's Law Dictionary. See BLACK'S LAW DICTIONARY (10th

ed. 2014) (defining *negligence* as "[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation").

This final rule increases the negligence threshold from 0.5 to 1.0 percent THC and clarifies how States and Indian Tribes determine when to suspend or revoke a producer's license. AMS believes that raising the negligence threshold from 0.5 percent to 1.0 percent THC will increase flexibility to farmers as they learn more about how to grow compliant hemp and as the availability of stable hemp genetics improves. In developing the compliance requirements for State and Tribal plans, AMS recognizes that there may be significant differences across States and Indian Tribes in how they will administer their respective hemp programs. This final rule provides that a producer shall not be subject to more than one negligent violation per calendar year.

State and Tribal hemp plans must still include requirements to conduct annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not being produced in violation of this rule, along with a procedure for handling violations.

In accordance with the 2018 Farm Bill, States and Indian Tribes with their own hemp production plans have certain flexibilities in determining whether hemp producers have violated their approved plans. However, there are certain compliance requirements that all State and Tribal plans must contain. This includes procedures to identify and attempt to correct certain negligent acts, such as failing to provide a legal description of the land on which the hemp is produced, not obtaining a license or other required authorizations from the State or Tribal government, or producing plants exceeding 0.3 percent total THC. States and Indian Tribes may include additional requirements in their plans.

This final rule specifies that hemp producers do not commit a negligent violation if they produce plants that exceed the acceptable hemp THC level and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 1.0 percent on a dry weight basis. AMS recognizes that hemp producers may take the necessary steps and precautions to produce hemp, such as using certified seed, using other seed that has reliably grown compliant plants in other parts of the country, or engaging in other best practices, yet still produce plants that exceed the acceptable hemp THC level. AMS believes that a hemp producer in that scenario has exercised a level of

care that a reasonably prudent person would exercise if the plant does not have a THC concentration of more than 1.0 percent on a dry weight basis. AMS arrived at this increased tolerance based on input from commenters, particularly State agriculture departments that operated hemp research programs under the 2014 Farm Bill, along with data provided by laboratories testing hemp subject to 2018 Farm Bill requirements. The 0.5 percent was based on data from three states participating in the 2014 Farm Bill pilot program. AMS believes raising the negligent violation threshold from 0.5 percent to 1.0 percent in the final rule provides a greater buffer and reduces farmers' exposure to risk of violation accrual and license suspension.

AMS recognizes the violation threshold may incentivize (or disincentivize) innovation by research institutions and producers. AMS acknowledges more innovation and research across industry will bring more stability to stakeholders. AMS believes the 1.0 percent threshold incentivizes innovation across industry more so than a 0.5 percent violation threshold. Further, comments addressed the negative impact of the accrual of negligent violations on the financial stability of the individual business. They described how a hemp grower's access to credit and insurance is jeopardized when negligent violations accumulate and lead to a determination of culpable negligence. Comments explained that lending institutions and insurance providers look for risk factors. They also raised questions about how the accrual of negligent violations may be interpreted by lender or providers. Comments said that many insurers will not cover crop losses if losses are due to the growers' negligence.

AMS acknowledges institutional lenders view violations as risk factors in decision making. AMS also notes that not all culpable violations are derived from the accrual of negligent violations. Culpable violations may be the result of producers violating other parts of the 2018 Farm Bill. However, the 2018 Farm Bill explicitly considers certain actions as constituting negligent violations. AMS's intention is to provide a threshold between 0.3 percent THC level and what would be considered a negligent violation so not all hemp that tests over the 0.3 percent be considered a negligent violation. Because a producer will not have committed a negligent violation every time he or she grows hemp with a concentration of hemp above the 0.3 percent level, this will assist producers when requesting loans or other financial assistance.

Several comments suggested that a 0.5 percent negligence threshold threatens the survival of farmers in an emerging industry. Comments suggested that the low threshold is a barrier to entry for new farmers or farmers with no experience growing hemp, who risk high initial capital investments to establish operations. Comments argued that the low threshold favors larger farms using industrialized hemp varieties and production practices, and that the low negligence threshold in the IFR would unnecessarily criminalize farmers working with a legal agricultural commodity. Increasing this threshold to 1.0 percent benefits producers, including small and new farmers, that intended to grow hemp but whose crops tested “hot” even though they made reasonable efforts to grow hemp.

In cases where a State or Indian Tribe determines a negligent violation has occurred, a corrective action plan shall be established. The corrective action plan must include a reasonable date by which the producer will correct the negligent violation. Producers operating under a corrective action plan must also periodically report to the State or Tribal government, as applicable, on their compliance with the plan for a period of not less than two calendar years following the violation. A producer who negligently violates a State or Tribal plan three times in a five-year period will be ineligible to produce hemp for a period of five years from the date of the third violation.

Several comments explained how these requirements as written in the IFR were confusing and difficult to administer. Particularly, commenters explained how a producer could easily receive three negligent violations during one growing season, which would lead to an automatic licensing revocation for the following five years. For example, a producer may grow hemp in three different locations. If the hemp becomes non-compliant cannabis, all in one season, the producer would lose the license in one season. Commenters described this as too strict and too severe a penalty for honest mistakes that many first-year hemp producers will certainly make. AMS agrees and wishes to clarify that this is not the intent of the regulation. AMS acknowledges that producers may have more than one production area and that they may harvest at different times. Tests results may be over the allowable limit on those production areas but the planting was performed at the same time using the same seeds. Allowing for only one violation per season would help minimize duplication of enforcement.

This final rule provides that a producer shall not be subject to more than one negligent violation per calendar year. As it is customary in agriculture, practices vary due to many factors such as weather, availability of labor, transportation and storage capacity and more. Due to many factors, producers make determinations about planting and harvest cycles. In certain circumstances, producers may plant before the first cycle has been harvested specially when they plant in multiple locations. Calendar year is easier to administer and will allow for various growing seasons.

Each geographical area has a growing season based on specific temperature, weather, soil or other factors in that region, therefore this rule is defining growing season as a calendar year. This will allow flexibility, including a year-round season if States and Indian Tribes have a warmer climate or greenhouse growing.

Negligent violations are still not subject to criminal enforcement action by local, Tribal, State, or Federal government authorities under this regulation.

State and Tribal plans also must contain provisions relating to producer violations made with a culpable mental state greater than negligence, meaning acts made intentionally, knowingly, or with recklessness. This definition is derived from the definition of negligence in Black’s Law Dictionary. See BLACK’S LAW DICTIONARY (10th ed. 2014) (giving as a definition of *negligence* “[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation”). If it is determined a violation was committed with a culpable mental state greater than negligence, the State agriculture department or Tribal government, as applicable, shall immediately report the producer to the Attorney General, USDA, and the chief law enforcement officer of the State or Indian Tribe.

State and Tribal plans also must prohibit any person convicted of a felony related to a controlled substance under State or Federal law from participating in the State or Tribal plan and from producing hemp for 10-years following the date of conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date. This exemption language must be included in all State and Tribal hemp plans, whether they administered a 2014 Farm Bill research pilot program or not.

The 2018 Farm Bill does not define what it means to “participate in the [State or Tribal] program.” AMS is not requiring States and Indian Tribes to adopt a specific definition. Instead, they must define who those persons are in their plan. The definition must include one individual for whom a criminal history records check can be conducted for each license or authorization that the State or Indian Tribe issues. The final rule identifies and defines “key participants” as those participating in the USDA plan. State and Tribes may, but are not required, to adopt this definition for their plans.

The State or Indian Tribe will need to review criminal history reports for each individual identified as participating in its program. The final rules defines “criminal history report” as the Federal Bureau of Investigation’s Identity History Summary. The State or Indian Tribe may review additional reports or checks to determine whether an individual may participate in its plan. Finally, any person found by the USDA, State, or Tribal government to have materially falsified any information submitted to the program will be ineligible to participate.

#### G. Information Sharing

The IFR included requirements for State and Tribal plans to contain procedures for reporting specific information to USDA. Limited comments were received on these requirements. This information has been transmitted already by many States and Tribes to USDA. This information meets the requirements set in the 2018 Farm Bill. Therefore, the following requirements are the same as required under the IFR and are in subpart F of this final rule. This is separate from the requirement to report hemp crop acreage with FSA as discussed above.

The information required includes contact information for each hemp producer covered under the plan, including name, address, telephone number, and email address (if available). If the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of each employee for whom the entity is required to submit a criminal history report, and an email address if available, and Employee Identification Number (“EIN”) of the business entity. Producers must report the legal description and geospatial location for each hemp production area, including each field, greenhouse, or other site used by them, as stated in section A of this preamble. The report also shall include the status of the license or other

required authorization from the State or Tribal government, as applicable, for each producer under a hemp production plan. States and Indian Tribes will submit this information to USDA not later than 30 days after the date it is received using the appropriate reporting requirements as determined by USDA.

These reporting requirements are found at § 990.70 in this final rule. Further explanation of the specific information to be submitted, the appropriate format, and the specific due dates for the information is discussed in Section X (Regulatory Analysis) of this final rule. This information submitted from each State and Tribal plan, along with the equivalent information collected from individuals participating under the USDA plan, will be assembled and maintained by USDA and made available in real time to Federal, State, Tribal, and local law enforcement, as required by the 2018 Farm Bill. All information supporting, verifying, or documenting the information submitted to USDA must be maintained by the States and Indian Tribes for at least three years.

Under § 990.70(c), States and Indian Tribes must also submit annual reports regarding the total planted, harvested, and disposed acreage. Additionally, because the final rule provides for remediation of plants, the final rule requires all remediated acreage to be reported as well. Similarly, under § 990.71(c), all USDA hemp plan producers must submit annual reports to USDA detailing total planted acreage, total acreage disposed and remediated, and total harvested acreage.

#### H. Certification of Resources

All State and Tribal plans submitted for USDA approval must also have a certification stating the State or Indian Tribe has the resources and personnel necessary to carry out the practices and procedures described in their plan. Section 297B of the AMA requires this certification, and the information is important to USDA's approval of State and Tribal plans, in that all such plans must be supported by adequate resources to effectively administer them. This section has not changed from the IFR.

#### I. State and Tribal Plan Approval, Technical Assistance and USDA Oversight

Since the publication of the IFR, AMS has worked extensively with States and Indian Tribes in developing hemp production plans. As States and Indian Tribes begin the work of modifying their plans to incorporate the changes herein, we encourage States and Indian Tribes

to continue working with and sharing information with AMS. States and Tribes may need to change plans based on changes in this final rule because their State or Tribal laws may no longer match the requirements in this final rule. Even though some of the changes in this final rule are less burdensome, State and Tribal plans must follow their own legislations. Accordingly, they must amend their plans. During the plan development and/or revision process, States and Indian Tribes are encouraged to contact USDA so we may provide technical assistance in developing plan specifics. Since the publication of the IFR, USDA approved over 60 State and Tribal plans within the 60-day requirement. USDA approved plans that comply with the 2018 Farm Bill and with the provisions of the IFR. For the 2021 planting season, the 2018 Farm Bill, amended by the Continuing Resolution (CR) (Agriculture Improvement Act of 2018 (7 U.S.C. 5940 note; Pub. L. 116–260)), provided that States and institutions of higher education can continue operating under the authorities of the 2014 Farm Bill until January 1, 2022. AMS clarified the avenues for Tribal participation under authorities in the 2014 Farm Bill to grow industrial hemp for research purposes. This clarification is available on the AMS website: <https://www.ams.usda.gov/content/usda-clarifies-industrial-hemp-production-indian-tribes>.

Due to this extension, many States decided to remain under the 2014 Farm Bill provisions and rescinded their previously approved plans. All States are eligible to remain or start programs under the 2014 Farm Bill provisions. As a result, USDA will oversee 20 State and 20 Tribal plans under the 2018 Farm Bill until new States and Tribes submit more plans under the 2018 Farm Bill provisions.

As of November 2020, States and Tribes operating under the 2018 Farm Bill reported 4,192 licensed producers representing 6,166 acres planted. Of these acres planted, there were 231 disposals representing 730 acres disposed due to not meeting the 0.3 percent acceptable hemp THC level. This data is limited because even though many States and Tribes have approved plans, they have not all been fully implemented. USDA expects more data will be available as the 2021 season begins and States and Tribes implement their programs.

USDA will use the procedures in this rule, which are substantively similar to those in the IFR, to review and approve State and Tribal plans. If a plan does not comply with the requirements of the Act

and this regulation, it will not be approved. However, USDA has worked with many States and Tribes submitting plans to assist them in meeting the requirements and obtaining approval for their plans.

If a plan is not approved, USDA provides a letter of notification outlining the deficiencies identified. The State or Tribal government may then submit an amended plan for review. If the State or Tribe disagrees with the determination made by USDA regarding the plan, a request for reconsideration can be submitted to USDA using the appeal process as outlined in section V of this document. Plans submitted by States and Indian Tribes must be approved by USDA before they can be implemented.

States and Indian Tribes can submit their plans to USDA through electronic mail at [farmbill.hemp@usda.gov](mailto:farmbill.hemp@usda.gov) or by postal carrier to USDA. The specific mailing address is provided on the USDA Domestic Hemp Production Program website.

If the State or Tribal plan application is complete and meets the criteria of this part, USDA issues an approval letter. Approved State and Tribal plans, including their respective rules, regulations, and procedures, are posted on USDA's hemp program website.

A USDA-approved State or Tribal plan will remain in effect, unless approval is revoked by USDA pursuant to the revocation procedures discussed in this section or unless the State or Tribe makes substantive revisions to their plan or their laws that alter the way the plan meets the requirements of this regulation. Additionally, changes to the provisions or procedures under this rule or to the language in the 2018 Farm Bill may require plan revision and resubmission to USDA for approval. Changes to applicable Federal and State or Tribal statutes may also require plan revision and resubmission to USDA for approval and may lead to plan revocation if the plan is not amended. Should States or Indian Tribes have questions regarding the need to resubmit their plans, they should contact USDA for guidance.

A State or Tribal government may submit an amended plan to USDA for approval if: (1) The Secretary disapproves a State or Tribal plan; or (2) the State or Tribe makes substantive revisions to their plan or to their laws that alter the way the plan meets the requirements of this regulation, or as necessary to bring the plan into compliance with changes in other applicable law or regulations.

If the plan previously approved by USDA needs to be amended because of

changes to the State's or Tribe's laws or regulations, such resubmissions should be provided to USDA within 60 days from when the new State or Tribal law or regulations are effective. Producers will be held to the requirements of the previous plan until such modifications are approved by USDA. If State or Tribal government regulations in effect under the USDA-approved plan change, but the State or Tribal government does not resubmit a modified plan within 60 days of the effective date of the change, USDA will issue a notification to the State or Tribal government that approval of its plan will be revoked. The revocation will be effective no earlier than the beginning of the next calendar year. If a plan is revoked, producers previously subject to an approved plan would be eligible to apply to USDA for a license. This is a change from the IFR that allowed for resubmission because of a change in State or Tribal law or regulations within a calendar year. This modification is due to USDA's need to know in a timelier manner, since such laws and regulations are the foundations of the hemp plans. The words of the plans do not have meaning if they are not aligned with current authorities.

USDA has the authority to audit States and Tribes to determine if they are in compliance with the terms and conditions of their approved plans. If a State or Indian Tribe is noncompliant with their plan, USDA will work with that State or Indian Tribe to develop a corrective action plan. However, if additional instances of noncompliance occur, USDA has the authority to revoke the approval of the State or Tribal plan for one year or until the State or Tribe become compliant. AMS still believes that one year is sufficient time for a noncompliant State or Indian Tribe to evaluate problems with their plan and make the necessary adjustments. Should USDA determine the approval of a State or Tribal plan should be revoked, such a revocation would begin after the end of the current calendar year, so producers will have the opportunity to adjust their operations as necessary. This will allow producers to apply for a license under the USDA plan so that their operations do not become disrupted due to the revocation of the State or Tribal plan.

### III. Department of Agriculture Plan

The 2018 Farm Bill requires USDA to administer a hemp production plan for producers in jurisdictions where hemp production is legal but is not covered by an approved State or Tribal plan. The USDA licensing remains available to producers in States and Tribal territories without a USDA-approved hemp plan.

All hemp produced in a jurisdiction without an approved State or Tribal plan must meet the requirements of the USDA plan. The requirements for producers operating under the USDA plan are similar to those operating under approved State and Tribal plans.

Regulatory requirements for producers licensed under the USDA plan in this final rule differ in some cases from corresponding requirements in the IFR and are explained in the following section. Comments submitted to the IFR generally did not address these requirements specifically; rather they focused on the broader requirements around sampling, testing, and disposal, to which all hemp producers are subject, whether licensed by a State, a Tribe, or USDA.

#### A. USDA Hemp Producer License and Criminal History Report

To produce hemp under the USDA plan, producers must apply for and be issued a license from USDA. USDA has been accepting applications from producers since October 2019. Any license issued by USDA prior to publication of this final rule will remain in effect and subject to the original expiration date. As of the issuance of this final rule, USDA has issued 380 licenses under the USDA plan.

While a State or Tribal government has a draft hemp production plan pending for USDA approval, USDA will not issue USDA hemp production licenses to individual producers located within that State or Tribal territory. Once USDA approves a hemp production plan from a State or Tribe, it will deny any license applications from individuals located in the applicable State or Tribal territory. If USDA disapproves a State or Tribal hemp production plan, individual producers located in the State or Tribal territory may apply for a USDA hemp production license, unless hemp production is illegal in the State or Tribal territory where they intend to produce hemp.

Comments to the IFR described confusion around the application window for when USDA would receive and process applications as described in the IFR. The IFR said that for the first year after USDA began to accept applications, applications could be submitted any time. For all subsequent years, license applications and license renewal applications would have to be submitted between August 1 and October 31. AMS requested input on this application window, and commenters were generally opposed. Under this final rule, USDA will accept applications for USDA hemp production

licenses on a rolling basis to better accommodate the needs of producers. AMS continues to encourage the submission of applications well before the planting season so AMS has adequate time to process the applications. All applications must comply with the requirements as described below. The license application is available online at the USDA Domestic Hemp Production Program website at <https://www.ams.usda.gov/rules-regulations/hemp/information-producers>. Applications may be submitted electronically or by mail.

The producer license application requires contact information such as name, address, telephone number, and email address (if available). If the applicant represents a business entity, and that entity will be the producer, the application will require the full name of the business, address of the principal business location, full name and title of the key participants on behalf of the entity, an email address if available, and EIN of the business entity. All applications must be accompanied by a completed criminal history report. Several comments to the IFR expressed opposition to this requirement. AMS is retaining this requirement since verification of compliance with the felony restriction is a statutory requirement. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

Some commenters expressed concern with the requirements pertaining to "key participants," particularly with the requirement that all key participants undergo a background check. To the extent the commenters equated a criminal history check with a background check, AMS is retaining this requirement, since key participants are those individuals responsible for ensuring compliance with the regulatory requirements contained herein. If key participants are not subject to criminal history checks, AMS cannot ensure statutory restrictions on individuals with felony convictions related to controlled substances are met per Section 297B(e)(3)(B)(i) of the AMA. AMS notes that it will not conduct any other checks into the background of key participants.

Key participants are a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes a person in a corporate entity at executive levels including the chief executive officer, chief operating officer, and chief financial officer. This does not

include other management positions like farm, field, or shift managers. The final rule also specifies that the definition of key participant does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader, except when that member exercises executive managerial control over hemp production. AMS added this specification to address concerns raised by Indian Tribes regarding issues that can arise when a Tribal leader is also involved in the production of hemp in their capacity as a Tribal leader. While AMS understands the issues that can arise when a Tribal leader is subject to the felony conviction restriction, AMS must also ensure that all required entities operating under a USDA plan comply with Section 297B(e)(3)(B) of the AMA. Therefore, the definition of key participants still encompasses Tribal leaders who exercise executive managerial control over hemp production.

USDA will not accept criminal history reports completed more than 60 days before the submission of an application, because the 60-day window provides USDA with an expectation that the findings of the report are reasonably current and accurate.

The criminal history report must indicate the applicant has not been convicted of a State or Federal felony related to a controlled substance for the 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

In addition to providing the information specified, the application will also require license applicants to certify they will adhere to the provisions of the plan.

Once all the necessary information has been provided, applications will be reviewed by USDA for completeness and to determine an applicant's eligibility. USDA will approve or deny license applications unless the applicant is intending to produce hemp in a jurisdiction that has submitted a plan to USDA or has a plan approved by USDA, in which case the application for a USDA license will be denied. Applicants will be notified if they have been granted or denied a license either by mail or email.

If an application is denied, the applicant will receive a notification letter or email specifying why the application was denied. If an application is denied because it is incomplete, the applicant will have the

option of resubmitting a revised application. If the application was denied for other reasons, the applicant will have the opportunity to appeal USDA's decision in accordance with the appeals process outlined in the regulation in subpart D.

Once a license application has been approved, USDA will issue the producer license. Licenses are not transferrable in any manner. An applicant whose application has been approved will not be considered a licensed producer under the USDA plan until the applicant receives their producer license. Licenses do not renew automatically and must be renewed every three years.

Applications for renewal will be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change in the applicable law or regulations since approval of the initial or last application. In such a case, the subsequently enacted law or regulation shall govern renewal of the license. Licenses will be valid until December 31 of the year that is at least three years after the license is issued. This date is not tied to the harvest and planting season. For example, if a producer applies for a license on August 1, 2021, and is granted a license on September 15, 2021, the license would expire December 31, 2024. A December 31 expiration date will allow licensed producers time to apply for a license renewal prior to their prior license's expiration and prevent a gap in licensing.

A producer licensed by USDA must report their hemp crop acreage to FSA. Producers must provide specific information to FSA, including, but not limited to, USDA license number, the specific location where hemp is produced and the acreage, greenhouse, building, or site where hemp is produced. The specific location where hemp is produced must be identified, to the extent practicable, by the geospatial location. FSA will provide assistance in identifying the hemp growing location. Please refer to the Section II of this document on State and Tribal hemp production program requirements for further discussion on FSA reporting requirements.

If at any time there is a change to the information submitted in the license application, a license modification is required. A license modification is required if, for example, the licensed business is sold to a new owner or hemp will be produced in a new location not described on the original application. Producers must notify USDA immediately should there be any change

in the information provided on the license application.

#### *B. Sampling for THC*

The IFR stated that all hemp production must be sampled and tested for THC concentration levels. It is the responsibility of the licensed producer to pay any fees associated with sampling. AMS issued guidance on sampling procedures that meet the sampling requirements to coincide with publication of the IFR and will update the guidance with this final rule. AMS is requiring that all samples tested for THC concentration levels be conducted in DEA-registered laboratories. However, this requirement will not be applicable until December 31, 2022.

Significant input was received on the IFR sampling requirements. Please refer to section B under State and Tribal plans above and the discussion of comments below for a summary of findings. Producers under the USDA plan are subject to the sampling and testing requirements as outlined in the USDA guidelines for sampling and testing. Since USDA cannot develop a one size fits all performance-based sampling program, all producers licensed under the USDA plan must comply with the USDA sampling guidelines. USDA licensed producers are responsible for obtaining the services of sampling agents and hemp testing laboratories themselves. USDA is updating guidance on sampling procedures and training for sampling agents with this rule. USDA does not provide sampling or testing services and will not pay for those services.

State and Tribal hemp regulators have successfully developed sampling requirements that ensure adherence to State and Federal regulations, while allowing for flexibilities due to limited State resources and State and Tribal differences. They explained that, since most hemp in a given region is harvested at the same time, sampling must be completed within a very short time frame by only a few individuals. Several States also explained that perceived risk determines State requirements. Some States utilize different sampling requirements for broad end-use categories like "fiber/grain" hemp versus "cannabinoid" hemp, while others base their requirements on historical THC concentrations of certain varieties or on the characteristics and growing history of a certain farm or producer. AMS agrees that sampling requirements should allow States and Indian Tribes more flexibility in the management of their hemp regulatory programs.

AMS agrees that requiring sampling from every lot may be burdensome and expensive for State and Tribal regulatory entities and producers.

AMS finds that it makes sense to allow States and Indian Tribes to consider performance-based alternatives when developing sampling plans that take into account unique sampling protocols for hemp growing facilities under their jurisdiction. The sampling requirements for State and Tribal plans allow for States and Indian Tribes to develop unique sampling protocols for hemp growing facilities under their jurisdiction. Sampling protocols must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, States and Indian Tribes may adopt a performance-based sampling protocol. A performance-based protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level. USDA encourages that the alternative protocol consider seed certification processes or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe, whether the producer is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State, or Tribal government, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors. AMS believes this will provide needed flexibility to States and Indian Tribes to develop logical and enforceable sampling requirements that take into consideration their unique circumstances. AMS will still require States and Indian Tribes to submit their individual sampling requirements for review as a component of the plan approval process. If a State or Tribal plan lacks a sampling protocol, every lot, and thereby every producer must be sampled and tested.

When evaluating sampling protocols submitted by States and Indian Tribes, USDA will evaluate the risk of producing non-compliant material to determine approval or disapproval. In evaluating the risk, USDA will take into consideration whether the performance-based factors the State or Tribe used have the potential to ensure compliance at a 95 percent confidence level.

Since USDA cannot develop performance metrics that would be applicable independently from where

the producer is located, producers licensed under the USDA plan are subject to the sampling requirements in the rule. USDA guidelines provided on the USDA website at <https://www.ams.usda.gov/rules-regulations/hemp/information-sampling> describe best practices for complying with those requirements. However, USDA would consider a performance-based sampling scheme for producers under the USDA plan, and amend the sampling requirements accordingly, if information collected by USDA in the future is sufficient to make this determination. Data must be reliable and able to be applicable across the production areas in the U.S.

Samples must be collected by a USDA-approved sampling agent, or a Federal, State, Tribal, or local law enforcement agent authorized by USDA to collect samples. As explained above, USDA is expanding the training requirements for sampling agents and will provide a list of authorized sampling agents on the USDA website. It is the responsibility of the licensed producer to pay any fees associated with sampling and testing. Sampling and testing guideline documents are being updated as part of this proceeding and are available on the USDA website.

The sampling procedures are designed to produce a representative sample for testing. They describe procedures for entering a growing area and collecting the minimum number of plant specimens necessary to accurately represent the THC content, through laboratory testing, of the sample to be tested.

### C. Testing Laboratories

The THC level in representative samples must be at or below the acceptable hemp THC level. Testing must be conducted using post-decarboxylation or other similarly reliable methods where the total THC concentration level measured includes the potential to convert THCA into THC. Further, test results should be determined and reported on a dry weight basis, meaning the percentage of THC, by weight, in a cannabis sample, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.

Based on AMS's review of scientific studies, internal research and information gathered from the *United Nations Office on Drugs and Crime: "Recommended Methods for the Identification and Analysis of Cannabis and Cannabis Products"* (ISBN 978-92-1-148242-3), AMS has determined that

testing methodologies meeting these requirements include gas or liquid chromatography with detection. As discussed earlier and stated in § 990.25(g), if a testing laboratory utilizes alternative testing methods, they must be reviewed and approved by USDA to assess their reliability, accuracy, and compliance with the requirements.

As explained earlier in this document, AMS is requiring that all testing of samples for THC concentration levels be conducted in DEA-registered laboratories. Enforcement of this requirement has been delayed until December 31, 2022. Non-DEA-registered labs can continue testing hemp for THC concentration until that time. Labs testing hemp for THC must meet standards of performance described in this regulation. Standards of performance ensure the validity and reliability of test results; that analytical method selection, validation, and verification are appropriate (fit for purpose); and that the laboratory can successfully perform the testing. Furthermore, the standards ensure consistent, accurate, analytical performance and that the analytical tests performed are sufficiently sensitive for the purposes of the detectability requirements under this final rule.

Laboratories conducting THC testing must also be registered with DEA to handle controlled substances under the CSA (21 U.S.C. 822 and 21 U.S.C. 844) and DEA regulations (21 CFR part 1301). USDA is adopting this requirement because of the potential for these laboratories to handle cannabis products testing above 0.3 percent THC. Such products are, by definition, marijuana, and a controlled substance. DEA registration requirements verify a laboratory's ability to properly handle controlled substances.

As previously explained in the requirements for State and Tribal plans, AMS is not adopting requirements that hemp testing laboratories be approved under a USDA Laboratory Approval Program or undergo ISO accreditation.

It is the responsibility of the licensed producer to select the DEA-registered laboratory that will conduct the testing and to pay any fees associated with testing. Laboratories performing THC testing for hemp produced under this program are required to share test results with the licensed producer and USDA. USDA will provide instructions to all approved labs on how to electronically submit test results to USDA. Laboratories may provide test results to licensed producers in whatever manner best aligns with their business practices, but producers must

be able to produce a copy of test results. For this reason, providing test results to producers through a web portal or through electronic mail, so the producer will have ready access to print the results when needed, is preferred.

Samples exceeding the acceptable hemp THC level are marijuana and will be handled in accordance with the procedures discussed in section C below.

Any licensee may request that the laboratory retest pre-harvest samples, if it is believed the original THC concentration level test results were in error. The licensee requesting the retest of the second sample would pay the cost of the test. The retest results would be issued to the licensee requesting the retest, and a copy would be provided to USDA or its agent.

#### Research Institutions Sampling and Testing

AMS also acknowledges that research institutions face special circumstances when conducting hemp research. Under the IFR, researchers and research institutions were required to comply with the same production requirements as commercial producers. Under this final rule, and as described in detail below, research institutions and the producers working with them are afforded greater sampling and testing flexibility to facilitate continued hemp research. Producers that produce hemp for research must obtain a USDA license. However, the hemp that is produced for research is not subject to the same sampling requirements provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level. The rule includes a performance-based standard for sampling for all licensed producers in section 990.24: “at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level.” The performance-based standard for research is a modification of that standard: “the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level.” We are comfortable with this modification to recognize that researchers may need flexibility to conduct their research and because the research hemp cannot enter the stream of commerce. USDA will monitor

researchers’ compliance with this standard as part of its normal oversight and compliance program.

USDA licensees shall ensure the disposal of all non-compliant plants. USDA licensees shall also comply with the reporting requirements including reporting disposal of non-compliant plants. Research institutions that handle “hot” hemp must follow CSA requirements for handling marijuana.

Performance based plans from research institutions where a State or Tribal plan is not in place will be reviewed by USDA. Notice and comment requirements under the PRA process will be followed before a final determination is made by USDA to move forward with approving performance-based plans for those producers under the USDA plan.

States and Indian Tribes are allowed to develop performance-based requirements for these institutions. However, the alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level.

The research institutions must follow reporting requirements. AMS believes this exception is necessary to help support research and development as it relates to hemp production. This decision allows these types of research facilities and institutions to confidently oversee the study of hemp plants through trialing and genetics research. AMS believes this exception to be critical to the growth of industry, particularly in its infancy. Over time, the exception provided by this final rule will help to stabilize the industry by providing greater understanding of hemp genetics and how certain varieties respond differently to growing conditions in various geographic locations. All producers are expected to benefit from such knowledge as they will be made aware of the more stable and consistently reliable hemp varieties. Any non-compliant plants produced by research institutions as a result of research and development will still need to be disposed and verified through documentation. Research institutions must follow licensing and reporting requirements.

#### D. Disposal of Non-Compliant Product

Under the IFR, non-compliant product was required to be disposed of by persons authorized to do so under the CSA and had to be destroyed. As explained below, under this final rule, producers may handle non-compliant product disposal on the farm, and they

have greater flexibility in remediating that product. USDA producers are required to follow procedures for ensuring effective disposal of cannabis plants produced in violation of this rule. Plants that are removed as a result of poor plant health, pests, disease, weather events, along with removal of male or hermaphrodite plants as part of a cross-pollination prevention plans, are not subject to the disposal requirements herein. This final rule retains the disposal requirements explained in the IFR, but clarifies what “disposal” means and explains how the process must be conducted. If a producer grew cannabis exceeding the acceptable hemp THC level, the IFR required that the material be disposed of in accordance with the CSA and DEA regulations because such material is marijuana, a Schedule I controlled substance under the CSA. The IFR required that material be collected for disposal by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, Tribal, or local law enforcement officer.

As explained earlier, AMS is now allowing the flexibility to conduct on-farm disposals and also allowing for remediation options.

If the results of a test conclude that the THC levels exceed the acceptable hemp THC level, the laboratory will promptly notify the producer and USDA or its authorized agent. If a licensed producer is notified that they have produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of in accordance with the on-farm disposal options described herein.

Licensed producers notified they have produced cannabis plants exceeding the acceptable hemp THC level must arrange for disposal or remediation of the lot represented by the sample in accordance with the procedures as specified above and described on the USDA website at <https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities>.

Producers must document the disposal or remediation of all non-compliant cannabis. This can be accomplished by providing USDA with a copy of the documentation of disposal or remediation using the reporting requirements established by USDA. These reports must be submitted to USDA following the completion of the disposal or remediation process.

#### E. Compliance

As described below, this final rule changes the THC threshold for a negligent violation from 0.5 percent

under the IFR to 1.0 percent. Further, rather than being liable for multiple negligent violations in each growing season as under the IFR, this final rule provides that producers can only incur one negligent violation in each growing season, which prevents producers from accumulating multiple negligent violations and losing program eligibility after a single growing season.

USDA will maintain oversight of USDA-licensed hemp producers by conducting audits of USDA licensees and working with licensees with negligent violations to establish corrective action plans. Negligent violations by a producer may lead to suspension or revocation of a producer's license.

While USDA has not yet conducted any random audits, the department may conduct random audits of licensees to verify hemp is being produced in accordance with Subtitle G of the AMA no more frequently than every three years, based on available resources. The format of the audit will vary and may include a "desk-audit" where USDA requests records from a licensee, or the audit may be a physical visit to a licensee's facility. When USDA visits a licensee's facility, the licensee must provide access to any fields, greenhouses, storage facilities, or other locations where the licensee produces hemp. USDA may also request records from the licensee, to include production and planting data, testing results, and other information as determined by USDA.

USDA will issue a summary of the audit to the licensee after the completed audit. Licensees who are found to have a negligent violation will be subject to a corrective action plan. Negligent violations include: (1) Failure to provide a legal description of the land on which the hemp is produced; (2) not obtaining a license before engaging in production; or (3) producing plants exceeding the acceptable hemp THC level. Similar to the requirements for State and Tribal plans, USDA will not consider hemp producers as committing a negligent violation if they produce plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the cannabis plant does not have a THC concentration of more than 1.0 percent on a dry weight basis. AMS believes that increasing the negligence threshold from 0.5 percent to 1.0 percent will increase flexibility to farmers as they learn more about how to grow compliant hemp and as the availability of stable hemp genetics improves. Further, producers may only receive one negligent violation per growing season, as determined by USDA

based on a review of producer records. USDA will use a calendar year as a growing season.

When USDA determines that a negligent violation has occurred, USDA will issue a Notice of Violation. This Notice of Violation will include a corrective action plan. The corrective action plan will include a reasonable date by which the producer will correct the negligent violation or violations and will require the producer to periodically report to USDA on its compliance with the plan for a period of not less than the next two calendar years. A producer who has negligently violated the provisions of this rule three times in a five-year period is ineligible to produce hemp for a period of five years from the date of the third violation. Negligent violations are not subject to criminal enforcement.

Hemp found to be produced in violation of this regulation, such as hemp produced on a property not disclosed by the licensed producer or without a license, would be subject to the same disposal provisions as for cannabis testing above the acceptable hemp THC level. Further, if it is determined a violation was committed with a culpable mental state greater than negligence, USDA will report the violation to law enforcement.

The 2018 Farm Bill limited the participation of certain convicted felons in hemp production. A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under the Act. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

#### *F. Suspension of a USDA License*

There are no changes to the IFR provisions related to suspension of USDA licenses in this final rule.

A USDA license may be suspended if USDA receives credible information that a USDA licensee has either: (1) Engaged in conduct violating a provision of this regulation; or (2) failed to comply with a written order from the AMS Administrator related to a negligent violation of this regulation. Examples of credible information are information from local authorities of harvested plants without testing or planting of hemp in non-licensed locations.

Any person whose license has been suspended shall not produce hemp during the period of suspension. A suspended license may be restored after a waiting period of one year. A producer

whose license has been suspended may be required to comply with a corrective action plan to fully restore their license.

A USDA license shall be immediately revoked if the USDA licensee: (1) Pleads guilty to, or is convicted of, any felony related to a controlled substance;<sup>9</sup> (2) made any materially false statement with regard to this regulation to USDA or its representatives with a culpable mental state greater than negligence; or (3) was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated the provisions of this regulation three times in five years.

If the licensed producer wants to appeal any suspension or revocation decision made by USDA as described in this section, they can do so using the appeal process explained in section V of this document.

#### *G. Reporting and Recordkeeping*

The 2018 Farm Bill requires USDA to develop a process to maintain relevant information regarding the land where hemp is produced. Reporting requirements under this final rule, particularly the requirement to report hemp crop acreage to FSA, are discussed extensively in Section B of the State and Tribal plan requirements and the same requirements are applicable to USDA licensed producers.

In general, changes from the IFR allow producers more flexibility in defining for FSA the areas (instead of "lots") they use for hemp production. USDA hemp production licensees can apply for licenses on a rolling basis under this final rule, in contrast to the limited period provided under the IFR. Reporting requirements under this final rule are revised slightly to allow producers to account for on-farm disposal of non-compliant product.

USDA's FSA is well suited to collect this information for the domestic hemp production program. FSA has staff throughout the United States who are trained to work with farmers to verify land uses. Many hemp producers are likely to be familiar with the FSA since they already operate traditional farms, and therefore already provide data to FSA on acres and crops planted. Producers may benefit from information to participate in other USDA programs through FSA offices. Licensed producers will be required to report their hemp crop acreage with FSA, and to provide FSA with specific

<sup>9</sup>For a corporation, if a key participant has a disqualifying felony conviction, the corporation may remove that person from a key participant position. Failure to remove that person will result in a license revocation.

information regarding field acreage, greenhouse, or indoor square footage of hemp planted. This information must include street address, geospatial location or other comparable identification method specifying where the hemp will be produced, and the legal description of the land. Geospatial location or other methods of identifying the production locations are necessary, as not all rural locations have specific addresses. This information is required for each field, greenhouse, building, or site where hemp will be grown. USDA will use this information to assemble and maintain the data USDA must make available in real time to Federal, State, Tribal and local law enforcement as required by the 2018 Farm Bill and as described in section G below.

Specific procedures for reporting hemp acreage to FSA will be posted on the USDA Domestic Hemp Production Program website. All information will be maintained by USDA for at least three calendar years. FSA will assist producers in identifying the hemp growing locations since they have maps that allow for better identification. This is a procedure that FSA employees are very familiar with since it is used for other USDA programs. This rule also revises the definition of “lot” to include other terms used by FSA with the same meaning. FSA uses terms like “farm,” “tract,” “field,” and “subfield.” FSA staff will not provide a “lot number” to producers as described in the IFR. Instead, FSA will assist producers to identify the area where hemp is grown. More details are provided under the States and Tribal plan Section B earlier in this final rule.

Licensed producers are required to maintain copies of all records and reports necessary to demonstrate compliance with the program. These records include those that support, document, or verify the information provided in the forms submitted to USDA. Records and reports must be kept for a minimum of three years. Because the final rule allows producers to remediate plants, the final rule also requires producers to maintain records on all remediated cannabis plants.

Under the USDA plan, there will be additional reporting requirements for licensed producers. These include information requested in the application for a license and the record and reporting requirements needed to document disposal or remediation of cannabis produced in violation of the provisions of this rule. Specific reporting requirements are detailed in § 990.71.

#### *H. Information Sharing With Law Enforcement*

USDA is working to develop and maintain a database of all relevant and required information regarding hemp as specified by the 2018 Farm Bill. This database will be accessible in real time to Federal, State, local, and Tribal law enforcement officers through a Federal government law enforcement system. USDA AMS will administer and populate this database, which will include information submitted by States, Tribes, laboratories, and USDA licensed producers and information submitted to FSA. States and Tribes must provide information to USDA in a format that is compatible with USDA’s information sharing system. USDA will work with States and Indian Tribes on system format and other information necessary to share information.

USDA will use this information to create a comprehensive list of all domestic hemp producers. USDA will also gather the information related to the land used to produce domestic hemp. This information will be comprehensive and include data from both State and Tribal plans and will include a legal description of the land on which hemp is grown by each hemp producer and the corresponding geospatial location or other identifiable location. Finally, USDA will also gather information regarding the status of all licenses issued under State and Tribal government plans and under the USDA plan.

This information will be made available in real time to Federal, State, local and Tribal law enforcement as required by the 2018 Farm Bill.

#### **IV. Definitions**

The following terms are integral to implementing Subtitle G of the AMA and establish the scope and applicability of the regulations of this final rule.

The term “Act” refers to the Agricultural Marketing Act of 1946. The 2018 Farm Bill amended the Agricultural Marketing Act of 1946 by adding Subtitle G, which is a new authority for the Secretary of Agriculture to administer a national hemp production program. Section 297D of Subtitle G authorizes and directs USDA to promulgate regulations to implement this program.

The “Agricultural Marketing Service” or “AMS” is the Agricultural Marketing Service of the U.S. Department of Agriculture is the agency the Secretary of Agriculture has been charged with the responsibility to oversee the administration of this new program.

The term “applicant” means any State or Indian Tribe that has applied for USDA approval of a State or Tribal hemp production plan for the State or Indian Tribe they represent. This term also applies to any person or business in a State or territory of an Indian Tribe not subject to a State or Tribal plan, who applies for a hemp production license under the USDA plan established under this part.

The term “cannabis” is the Latin name of the plant that, depending on its THC concentration level, is further defined as either “hemp” or “marijuana.” *Cannabis* is a genus of flowering plants in the family Cannabaceae, of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. For the purposes of this part, cannabis refers to any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined. This term is important in describing regulations that apply to plant production, sampling, or handling prior to determining its THC content.

The “Controlled Substances Act” is the statute, codified in 21 U.S.C. 801–971, establishing Federal U.S. drug policy under which the manufacture, importation, exportation, possession, use, and distribution of certain substances are regulated. Because cannabis with THC content concentration levels of higher than 0.3 percent is deemed to be marijuana, a Schedule I controlled substance, its regulation falls under the CSA. Therefore, for compliance purposes, the requirements of the CSA are relied upon for the disposal of cannabis that contains THC concentrations above the stated limit of this final rule.

The rule includes a definition of “conviction” to explain what is considered a conviction and what is not. Specifically, a plea of guilty or nolo contendere or any finding of guilt is a conviction. However, if the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction for purposes of part 990. This definition of “conviction” is consistent with how some other agencies conducting criminal history record searches determine disqualifying crimes.

A “corrective action plan” is a plan agreed to by a State, Tribal government, or USDA for a licensed hemp producer, to correct a negligent violation or non-compliance with a hemp production plan, its terms, the applicable law(s) or this regulation. Corrective action plans may also be a plan set forth by a State or Tribal government with an approved

hemp production plan to correct a non-compliance of their program with their USDA-approved plan. This term is defined in accordance with the 2018 Farm Bill, which mandates certain non-compliant actions to be addressed through corrective action plans.

“Culpable mental state greater than negligence” is a term used in the 2018 Farm Bill to determine when certain actions would be subject to specific consequences. This term means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.

The term “decarboxylated” refers to the completion of the chemical reaction that converts THCA into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid ((delta-9 THC) + (0.877\*THCA)).

“Delta-9 tetrahydrocannabinol,” also referred to as “Delta-9 THC” or “THC” is the primary psychoactive component of cannabis, and its regulation forms the basis for the regulatory action of this part. As mandated by the Act, legal hemp production must be verified as having THC concentration levels of 0.3 percent on a dry weight basis or below. For the purposes of this part, delta-9 THC and THC are interchangeable.

The term “disposal” means the action or process of getting rid of cannabis that is non-compliant.

“DEA” is an acronym for the “Drug Enforcement Administration,” a United States Federal law enforcement agency under the United States Department of Justice. The DEA is the lead agency for domestic enforcement of the Controlled Substances Act. The DEA plays an important role in the oversight of the disposal of marijuana, a Schedule I controlled substance, under the regulations of this part. The DEA is also instrumental in registering laboratories to legally handle controlled substances, including cannabis samples that test above the 0.3 THC concentration level.

“Dry weight basis” refers to a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

The “Farm Service Agency (FSA)” is an agency of the U.S. Department of Agriculture that provides services to farm operations including loans, commodity price supports, conservation payments, and disaster assistance. For the purposes of this program, FSA will

assist in information collection of land being used for hemp production.

“Gas chromatography” or GC, is a scientific method (specifically, a type of chromatography technique) used in analytical chemistry to separate, detect, and quantify each component in a mixture. It relies on the use of heat for separating and analyzing compounds that can be vaporized without decomposition. Under the terms of this part, GC is one of the valid methods by which laboratories may test for THC concentration levels.

For the purposes of this part, the term “geospatial location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

The term “handle” is commonly understood by AMS and used across many of its administered programs. For the purposes of this part, “handle” refers to the actions of cultivating or storing hemp plants or hemp plant parts prior to the delivery of such plant or plant part for further processing. In cases where cannabis plants exceed the acceptable hemp THC level, handle may also refer to the disposal of those plants.

“Hemp” is defined by the 2018 Farm Bill as “the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

“Liquid chromatography (LC)” is a scientific method (specifically, a type of chromatography) used in analytical chemistry used to separate, identify, and quantify each component in a mixture. It relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds. Under the terms of this part, LC is one of the valid methods by which laboratories may test for THC concentration levels. Ultra-Performance Liquid Chromatography (UPLC) is an additional method that may also be used as well as other liquid or gas chromatography with detection.

“Indian Tribe or Tribe” is defined in the 2018 Farm Bill by reference to section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

A “key participant” is a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity, including tribally-owned corporation individuals, at executive levels, including chief executive officer, chief operating officer, and chief financial officer. This does not include such management personnel as farm, field, or shift managers. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

“Law enforcement agency” refers to all Federal, State, Tribal, or local law enforcement agencies. Under the 2018 Farm Bill, State and Tribal submissions of proposed hemp production plans to USDA must be made in consultation with their respective Governors and chief law enforcement officers. Moreover, the 2018 Farm Bill contemplates the involvement of law enforcement in compliance actions related to offenses identified as being made under a “culpable mental state greater than negligence.” To assist law enforcement in the fulfillment of these duties, the 2018 Farm Bill also mandates information sharing that provides law enforcement with real-time data.

The term “lot” refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this part, “lot” is to be defined by the producer in terms of farm location, field acreage, and variety (*i.e.*, cultivar) and to be reported as such to FSA. For FSA reporting purposes, FSA staff will determine the appropriate designation for the specific location(s) where hemp is being grown using FSA terminology such as “farm,” “tract,” “field,” and “subfield” to mean “lot” for the purpose of this rule.

“Marijuana,” or, as defined in the CSA, “marihuana,” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. The term “marihuana” does not include hemp, as defined in section 297A of the Agricultural Marketing Act

of 1946, and does not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o(1)). “Marihuana” also means all cannabis that tests as having a THC concentration level on a dry weight basis of higher than 0.3 percent.

“Negligence” is a term used in the 2018 Farm Bill to describe when certain actions are subject to specific compliance actions. For the purposes of this rule, the term means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this final rule.

Used in relation to the other terms and regulations in this part, “phytocannabinoids” are cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD). Testing methodologies under this part will refer to the presence of “phytocannabinoids” as either THC or CBD.

Under the terms of this program, “plan” refers to a set of criteria or regulations under which a State or Tribal government, or USDA, monitors and regulates the production of hemp. “Plan” may refer to a State or Tribal plan, whether approved by USDA or not, or the USDA hemp production plan.

The 2018 Farm Bill mandates that all cannabis be tested for THC concentration levels using “post-decarboxylation” or similar methods. In the context of this part, “post-decarboxylation” means testing methodologies for THC concentration levels in hemp, where the total potential delta-9-tetrahydrocannabinol content, derived from the sum of the THC and THCA content, is determined and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, known as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. The result of this test calculates total potential THC. The post-decarboxylation value of THC, or total THC, can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact, and requires a conversion calculation of that THCA to calculate total potential THC. See also

the definitions for decarboxylation and total THC.

The term “produce,” when used as a verb, is a common agricultural term that is often used synonymously with “grow,” and means to propagate plants for market, or for cultivation for market, in the United States. In the context of this part, “produce” refers to the propagation of cannabis to produce hemp.

“Producer” means a producer as defined in 7 CFR 718.2 specifically of hemp. The 2018 Farm Bill mandates that USDA maintain a real-time informational database that identifies registered hemp production sites, whether under a State, Tribal, or USDA plan, for the purposes of compliance and tracking with law enforcement. AMS will maintain this system with the information collection assistance of FSA. In order to maintain consistency and uniformity of hemp production locations, USDA is using FSA to collect this information through their crop acreage reporting system. In this context, a common use of the term “producer” is essential to maintaining a substantive database. For this reason, the definition of “producer” incorporates the FSA definition of “producer” with the additional qualifier that they are a producer specifically of hemp. All producers are required to be licensed or authorized to produce hemp under the USDA Domestic Hemp Production Program.

“Remediation” refers to techniques utilized to transform non-compliant cannabis into something useful and compliant while disposing of non-compliant parts. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a bio-mass like material, then re-testing the shredded biomass material for compliance.

“Secretary” means the Secretary of Agriculture of the United States Department of Agriculture.

Section 297A of the Act defines “State” as any of one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The term “State department of agriculture” is defined by the 2018 Farm Bill as the agency, commission, or department of a State government responsible for agriculture in the State. The statutory definition is self-

explanatory, and USDA is adopting the same definition without change for part 990.

The term “store” is related to the term “handle” under this part and means to deposit hemp plants or hemp plant product in a storehouse, warehouse, or other identified location by a producer for safekeeping prior to delivery to a recipient for further processing.

The term “Territory of the Indian Tribe” means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

The IFR defined the Territory of the Indian Tribe as “Indian Country” in 18 U.S.C. 1151 because section 1151 is a commonly acceptable approach to determine a Tribal government’s jurisdiction. The final rule retains the language of section 1151, but adds item (d) to the definition of “Territory of the Indian Tribe.” This addition does not significantly expand the definition because many of the lands encompassed by item (d) were already considered as “Territory of the Indian Tribe” under the IFR. For example, off-reservation trust land, if not considered part of a reservation under section 1151(a), is generally considered within a dependent Indian community under section 1151(b). See *Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142, 1149–50 (9th Cir. 2020); Felix Cohen, Cohen’s Handbook of Federal Indian Law, section 3.04 (Nell Jessup Newton ed. 2012). Also, restricted fee lands outside of a reservation are often considered part of a dependent Indian community, provided the lands satisfy the two requirements of a dependent Indian community—lands that are (1) set aside by the Federal Government for the use of the Indians and (2) under federal superintendence. *Citizens Against Casino Gambling in Erie Cty. v. Chaudhuri*, 802 F.3d 267, 281 (2d Cir. 2015).

However, because “dependent Indian communities” is an oft-litigated term that is interpreted varying amongst the courts, USDA decided to add item (d) to the definition of “Territory of the Indian Tribe” to add clarity and ensure nationwide consistency regarding the jurisdictional boundaries of regulatory authority over the production of hemp.

“Total THC” is the post-decarboxylation value of THC, either after testing with gas chromatography or LC after using a conversion factor. LC does not use decarboxylation as part of the process and this addition is to account for the conversion of THCA into THC if decarboxylation was part of the process. The addition of 87.7 percent of THCA is applicable if the testing laboratory uses LC with detection to measure the THC. Total THC is the measured THC plus 87.7 percent of THCA.

As defined by the 2018 Farm Bill, the term “Tribal government” means the governing body of an Indian Tribe. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The “U.S. Attorney General” is the Attorney General of the United States.

“USDA” is an acronym that stands for the “United States Department of Agriculture.”

## V. Appeals

The following paragraphs explain when and how to appeal a USDA decision. State or Tribal plans may include similar appeal procedures. No changes were made to this section based on comments.

An applicant for a USDA hemp production program license may appeal a license denial to the AMS Administrator. USDA licensees can appeal denials of license renewals, license suspensions, or license revocations to the AMS Administrator. All appeals must be submitted in writing and received within 30 days of the denial. Appeals may be submitted by mail or electronic form. This submission deadline should provide adequate time to prepare the necessary information required for the appeal. The Administrator will take into account the applicant or USDA licensee’s justification for why the license should not be denied, suspended, or revoked, and then issue a final determination. Determinations made by the Administrator under the appeals process will be final unless the applicant or USDA licensee requests a formal adjudicatory proceeding to review the decision, which will be conducted pursuant to the U.S. Department of Agriculture’s Rules of

Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H, which USDA will amend to add the Domestic Hemp Production Program. If the applicant or USDA licensee does not request that the Administrator initiate a formal adjudicatory proceeding within 30 days of the Administrator’s adverse ruling, such ruling becomes final.

### *Appeals Under a State or Tribal Hemp Production Plan*

A State or Tribe can appeal the denial of a proposed hemp production plan, or the proposed suspension or revocation of a plan by USDA. USDA will consult with States and Tribes to help ensure their draft plans meet statutory requirements, and that existing plan requirements are monitored and enforced by States and Indian Tribes. If, however, a proposed State or Tribal plan is not approved, or an existing plan is suspended or revoked the decision may be appealed.

If the AMS Administrator grants a State or Indian Tribe’s appeal of a disapproval of its hemp plan, the proposed State or Tribal hemp production plan shall be approved as proposed. If the AMS Administrator denies an appeal, prospective producers located in the State or Tribal Territory can apply directly to USDA for a hemp license. Similarly, if an appeal of a denied proposed State or Tribal plan is denied, producers located in the impacted State or Tribal territory may apply for licenses under the USDA plan.

A State or Tribe appealing the suspension or revocation of their hemp production plan must explain the reasoning for the appeal and the appeal must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. This timeframe should be adequate for the assembly of the information required to be submitted as part of the appeal.

## VI. Interstate Commerce

Nothing in this rule prohibits the interstate commerce of hemp. No State or Indian Tribe may prohibit the transportation or shipment of hemp produced in accordance with this part and with section 7606 of the 2014 Farm Bill (expires January 1, 2022) through the State or the territory of the Indian Tribe, as applicable.<sup>10</sup>

<sup>10</sup> See section 10114 of the 2018 Farm Bill and the USDA General Counsel’s Legal Opinion on the Authorities for Hemp Production at <https://www.ams.usda.gov/content/legal-opinion-authorities-hemp-production>.

## VII. Outreach

As part of this rulemaking process, AMS held numerous meetings with State and Tribal governments and their representatives, industry organizations, groups and individuals with experience in the hemp industry, and representatives of law enforcement, as well as other Federal agencies.

In addition, USDA also conducted a listening session on March 13, 2019, that had more than 2,100 participants, and included comments from 46 separate speakers representing States, Tribes, producers, end-users, hemp organizations, and others. The recording of the listening session is available on the USDA website at <https://www.ams.usda.gov/rules-regulations/hemp>. On May 1 and 2, 2019, USDA also participated in Tribal consultation meetings for a total of 52 and 38 participants, respectively. On September 24, 2020, AMS conducted another Tribal Consultation with approximately 90 participants.

AMS published an interim final rule on October 31, 2019 (84 FR 58522), that established a temporary hemp production program and invited public comments on the program’s provisions. The initial 60-day comment period was extended by 30 days on December 18, 2019 (84 FR 69295). The comment period was reopened for another 30 days on September 8, 2020 (85 FR 55363). A total of approximately 5,900 comments were submitted by States, Tribes, farmers, industry associations, and other interested groups and individuals during the combined comment periods expressing their views on the provisions of the IFR and suggesting modifications, many of which have been incorporated into this final rule.

Finally, in November 2019, AMS posted an informational webinar about the domestic hemp production program on its website (in English and Spanish) at <https://www.ams.usda.gov/rules-regulations/hemp>. AMS has also posted additional useful information for regulated entities and other interested persons on its website at <https://www.ams.usda.gov/rules-regulations/hemp>.

As required by the Farm Bill, the Secretary developed this final rule and related guidelines in consultation with the U.S. Attorney General. In addition, USDA has submitted information to, and consulted with, the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding updates on the

implementation of the hemp requirements in the Farm Bill.

### VIII. Severability

This final rule includes a severability provision. This provision helps address the status of the regulations should a court vacate a particular provision. This section provides that if any provision of part 990 is found to be invalid, the remainder of the part shall not be affected.

### IX. Comment Analysis

AMS accepted comments during an initial comment period from October 31, 2019 through December 31, 2019. On December 18, 2019 (84 FR 69295), this initial comment period was extended for an additional 30 days, ending January 29, 2020. AMS reopened the comment period for 30 additional days on September 8, 2020 (85 FR 55363), ending October 8, 2020. Comments may be accessed through *Regulations.gov*.<sup>11</sup> Reopening the comment period gave interested persons an additional opportunity to comment on the IFR. Comments were solicited from all stakeholders, notably those who were subject to the regulatory requirements of the IFR during the 2020 production cycle.

AMS specifically requested comments on the 15-day sampling and harvest timeline; the possibility of establishing a fee-for-service hemp laboratory approval process for labs that wish to offer THC testing services; the possibility of requiring all laboratories testing hemp to have ISO 17025 accreditation; the number of labs already ISO 17025 accredited; additional examples of reasonable efforts to illustrate actions hemp producers can take in order to avoid committing a negligent violation under the program; the sufficiency of the hemp license application period; whether the information collection for the program is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; the ways to enhance the quality, utility, and clarity of the information to be collected; the ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology; whether there is information or data that may inform whether or not the market will experience a significant shift, either positive or negative, in the developing hemp market and on consumers; any data or information on what impacts the regulation may have on current and future innovation in the areas of industrial hemp usages and how much such impacts on innovation may affect rural communities; the potential for innovation and the uncertainty and its impact on the hemp market vis a vis steady State; and additional reliable data sources on the annual receipts of industrial hemp producers.

AMS received approximately 5,900 comments. Comments represented the views of States, Indian Tribes, hemp farmers and processors, universities, laboratories, trade associations, carriers, non-profit associations, other Federal government agencies, consumers, and other interested individuals. A summary of the comments and AMS's analysis and response follows.

#### Extension of Comment Period

Several commenters urged AMS to extend the public comment period to allow for small businesses to meaningfully participate in this rulemaking process. One reason given was that the comment period fell in the middle of the harvest season for much of the mid-Atlantic and southern hemp growers, excluding those who grow indoors, and therefore were too busy to comment. Other reasons given were the ongoing global pandemic as well as many other ongoing natural disasters nation-wide that have presented additional strains and unique challenges to agricultural operations.

*AMS Response:* AMS provided an initial 60-day comment period and a 30-day extension and then reopened the comment period for 30 additional days in order to receive feedback from stakeholders thus giving ample time to interested parties to submit comments. In order to finalize the Domestic Hemp Promotion Program before the 2021 production cycle begins, AMS decided not to extend the comment period and to finalize this rule.

#### Extension of 2014 Pilot Program

Under the 2014 Farm Bill, State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes. Congress extended this authority under the 2021 Continuing Appropriations Act until January 1, 2022. After January 1, 2022, domestic hemp production must

comply with Subtitle G of the AMA and this final rule.

*Comments:* Numerous comments praised the hemp production regulatory schemes established by States and Universities under the 2014 Farm Bill authority. Many comments reflected on the perceived increase in regulatory burden under the IFR, as opposed to the regulatory scheme that has been applied to domestic hemp production until now. Many comments, while making recommendations with regards to specific aspects of the IFR provisions, also encouraged USDA to continue to regulate domestic hemp production under the 2014 Farm Bill until satisfactory resolution of industry concerns can be achieved. Further, several comments stated that the extension of the pilot programs under the 2014 Farm Bill for another two to three years would give the industry time to adjust to the new requirements and to develop hemp genetics to more easily comply with the regulations.

A few comments opposed extension of the 2014 Farm Bill pilot program, asserting that States now operating under the more restrictive 2018 Farm Bill provisions are placed at a disadvantage.

*AMS response:* The extension of the 2014 Farm Bill authority is not within the authority of USDA. Congress only extended this authority under the 2021 Continuing Appropriations Act (Pub. L. 116-260), until January 1, 2022.

#### THC Limit

The IFR adopts the 2018 Farm Bill definition of hemp as the plant species *Cannabis sativa* L. and any part of that plant with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Further, the IFR requires that THC levels in representative samples test at or below the acceptable hemp THC level. Testing must be conducted using post-decarboxylation or other similarly reliable methods, where the total THC concentration level measured includes the potential to convert THCA into THC. Finally, the IFR provides that hemp testing higher than the acceptable hemp THC level is considered a controlled substance and requires disposal.

*Comments:* Some comments supported the 2018 Farm Bill's hemp THC level of 0.3 percent, and some explained that States had successfully incorporated that limit into programs authorized under the 2014 Farm Bill. Some comments thanked USDA for clearly defining the delta-9 THC standard in the IFR, which commenters

<sup>11</sup> <https://www.regulations.gov/search/Results?rpp=25&po=0&s=AMS-SC-19-0042&fp=true&ns=true>.

said would foster uniformity across hemp production in all States.

However, a greater number of comments from various stakeholder groups, including producers, States, Indian Tribes, and hemp organizations, asserted that the 0.3 percent threshold is too low and impractical in a program intended for multiple end uses of hemp. Comments argued that individuals interested in obtaining cannabis for intoxication purposes are unlikely to be interested in material containing 1.0 percent THC—or perhaps higher, and that setting the threshold at even 1.0 percent THC would give farmers, breeders, and researchers a lot more flexibility and confidence in producing compliant crops. One commenter reported that their State recognizes hemp with THC concentrations of up to 0.39 percent, with most crops testing between 0.31 and 0.39 percent THC, and no end products testing higher than 0.3 percent THC. The comment suggested USDA should raise the THC limit to at least 0.39, if not up to 0.5 percent. Other comments recommended revising the threshold to a higher level, asserting that there is no scientific evidence that supports use of the 0.3 percent level. Some comments recommended increasing the threshold to 0.8 or 1.0 percent, while some suggested 2.0 percent and others as much as 5.0 percent. Comments explained that a THC concentration of 5 percent is not viable for recreational marijuana markets and that USDA should consider the end-use potential when determining a threshold. One comment recommending a THC threshold of at least 2.0 percent included a news story reporting that marijuana plants confiscated by law enforcement routinely have THC concentrations of 12 percent or higher.<sup>12</sup>

Several comments suggested that the IFR's level of 0.3 percent delta-9 THC on a dry-weight basis is "more aspirational than practical." Comments explained that THC levels vary with plant maturity and other factors. Comments urged USDA to build greater flexibility into the rule so producers don't unwittingly become illegal marijuana farmers as a result of factors beyond their control. One comment suggested USDA establish a wider gap between the THC levels that define controlled substances and agricultural commodities such as hemp to create an environment where hemp producers are presumed innocent until proven guilty of intentionally producing

a controlled substance. Several comments recommended that university and other research programs be given more leeway as they work toward developing more compliant, regionally appropriate varieties through breeding.

Some comments noted that hemp containing more than 0.3 percent THC is not eligible for crop loss or replant payments under USDA Risk Management Agency regulations. Comments said further that if USDA is not certifying seed because of the regional effects of growing conditions on genetics, farmers are at risk and should be able to obtain comprehensive insurance coverage for crops with negligible overage above the acceptable THC level.

Comments explained that while the genetics of most U.S. crops have been developed over many years, hemp has not enjoyed that history, and it will take time to develop compliant but commercially viable crops with marketable CBD content for different regions. Comments asserted farmers will have fewer planting options because of the lack of a national hemp seed certification protocol and limited agronomic research on hemp varieties and production practices. Comments inferred that the 0.3 percent THC threshold would effectively demand that farmers plant a nationwide monoculture with little genetic diversity, which they said would leave U.S. hemp crops vulnerable to pests and diseases.

Many comments questioned the selection by Congress of the 0.3 percent THC threshold to legally distinguish hemp from marijuana.<sup>13</sup> Comments frequently referenced a 1976 publication, *A Practical and Natural Taxonomy for Cannabis*, in which horticulturalists Dr. Ernest Small and Arthur Cronquist used 0.3 percent THC as a threshold to distinguish hemp from marijuana in their scientific study on cannabis.<sup>14</sup> Comments highlighted statements made by Small and Cronquist, saying the researchers openly acknowledged that they "arbitrarily adopt a concentration of 0.3 percent delta-9 THC (dry weight basis) in young, vigorous leaves of relatively mature plants as a guide to discriminating two classes of plants," and that the number was never intended to define hemp from a legal perspective. According to the comment, Small and Cronquist made no

conclusionary statement on the use of the 0.3 percent THC threshold.

Several comments reported that countries determined to compete in the global marketplace, including Switzerland, Australia, Thailand, Uruguay, and Ecuador, recognize an acceptable hemp THC limit of 1.0 percent. According to comments, the international market settled on the 1.0 percent THC limit after numerous countries tested hemp over many years. Comments recommended the IFR incorporate the same standard.

Comments asserted that the rights of Indian Tribes and small Tribal farmers should be protected by allowing greater flexibility in the hemp production regulations overall, consistent with Tribal self-government. For example, comments said that Indian nations should be recognized to have authority to grow hemp with up to 1.5 percent THC and should not be restricted to 0.3 percent.

One comment explained that their company has focused on breeding efforts to develop genetics that produce CBD-rich hemp with the lowest possible THC concentrations. The commenter claimed their company has harvested millions of pounds of hemp compliant with the 0.3 percent total THC standard since 2017. The comment said they produced 25 million rooted cuttings this spring—enough, according to the comment, to produce biomass for the entire country, and the commenter assumed they were not the only ones who had done so. The comment asserted further that the global standard for THC concentration is 0.2 percent and that to be competitive, U.S. production must adhere to a similarly strict standard.

Although asserting that the IFR hemp THC level of 0.3 percent is not commercially reasonable, some comments acknowledged that only Congress could change the statute to allow a higher limit, and some commenters offered to serve as resources in that effort. Other comments urged USDA to work with Congress to raise the THC threshold.

*AMS response:* Congress defined hemp in the 2018 Farm Bill as *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Any change to the statutorily established threshold of THC concentration requires an amendment to the statute. The CSA defines marijuana as cannabis that is over the 0.3 percent THC level. AMS has no discretion to change the THC level or to treat States and Tribes differently as the 2018 Farm Bill applies to all production of hemp in

<sup>12</sup> McCullough, Jolie. "Marijuana Prosecutions in Texas Have Dropped by More than Half Since Lawmakers Legalized Hemp." *The Texas Tribune*, 3 January 2020; [www.texastribune.org/2020/01/03/texas-marijuana-prosecution-drop-testinghemp/](http://www.texastribune.org/2020/01/03/texas-marijuana-prosecution-drop-testinghemp/).

<sup>13</sup> Johnson, Renee. "Hemp as an agricultural commodity." Congressional Research Service (2014).

<sup>14</sup> Small, Ernest, and Arthur Cronquist. "A practical and natural taxonomy for Cannabis." *Taxon* (1976): 405–435.

the U.S. Tribes do not have the authority to grow hemp with up to 1.5 percent THC as this would violate the 2018 Farm Bill and the CSA. Tribes' powers of self-government may be constrained by acts of Congress in accordance with Congress' constitutional authority to regulate commerce with Indian Tribes.

AMS notes that there seems to be confusion amongst some commenters on the THC level stated in the 2018 Farm Bill and the IFR's definition of acceptable hemp THC level. The acceptable hemp THC level in this final rule includes the 0.3 percent established in the Farm Bill plus any measure of uncertainty due to laboratory testing.

Regarding the comment citing the news story, AMS believes the commenter misconstrued the article's meaning. The article cited by the commenter explained that following passage of Texas's law that legalized hemp in early 2019, the number of marijuana prosecutions in the State plummeted, due in part to the lack of adequate and affordable criminal laboratory resources. According to the article, prosecutors were less likely to expend resources on low-level marijuana charges where the likelihood of conviction is low. The article described anticipated release of a new lab testing method that only determines whether THC concentration is above or below 2 percent for criminal testing purposes. According to the article, even though 2 percent is higher than the State's legal hemp limit of 0.3 percent, such testing would nevertheless be adequate for Texas law enforcement purposes, since nearly all marijuana plant prosecutions in the State involve THC concentrations of 12 percent or more. AMS believes neither the article nor the State are advocating legalization of hemp THC concentrations of up to 2 percent, but that Texas law enforcement is merely using that limit as a convenient way to determine whether to pursue criminal prosecution.

In response to concerns that producers could unwittingly become illegal marijuana farmers without greater flexibility in the rule, AMS has modified the negligent violation threshold as explained in the section responding to comments on the negligent violation threshold. AMS also notes, however, that it does not have any authority over how the DEA chooses to enforce compliance with the CSA.

In the final rule, AMS is implementing a nation-wide domestic hemp production program as contemplated by the 2018 Farm Bill. It is not amending Risk Management

Agency's regulations regarding crop loss or repayment payments. Thus, comments regarding those regulations are outside the scope of this rule.

#### Testing for Total THC

The IFR requires that when hemp THC levels are measured using post-decarboxylation or other similarly reliable methods, the total THC concentration level measured must include the potential to convert THCA into THC.

*Comments:* Some comments agreed that the measurement of delta-9 THCA should be added to the measurement of delta-9 THC and reported as total THC used for determining compliance with the hemp program requirements, as this is what many hemp producing States are already doing under State programs. A comment from an association of Departments of Agriculture reported that many States responding to their survey supported testing for total THC in this manner.

Other commenters disagreed. According to one comment, only 22 of 47 States with State-level hemp programs test for total THC. The comment said that 18 States do not currently test for total THC, and that 7 States' rules are ambiguous on this point. Other comments reported that State programs currently testing for only delta-9 THC are confident that producers are not selling "hot" crops.

One comment said it is irrational to subject hemp biomass to decarboxylation when most biomass harvested for processing into increasingly popular consumer goods or industrial products will never even be decarboxylated.

Another comment explained how USDA cannot alter the definition of hemp as set forth in the 2018 Farm Bill. The comment said that there should not be a "total" THC mandate and, rather, the plain reading of the 2018 Farm Bill establishes that delta-9 THC is actually the determinative factor. The comment went on to explain how other State and Federal agencies also rely only on delta-9 THC when making critical distinctions with respect to hemp, such as the DEA and the FDA, to determine whether a substance is controlled and subject to criminal penalties. The comment presented an alternative testing methodology where testing methods must be able to determine the potential for THCA to convert into delta-9 THC, and the test result must reflect that ability as well as the aggregate computation, but the controlling factor whether a crop meets the definition of hemp and is within the "acceptable hemp THC level" relies only upon the

delta-9 THC element. Thus, for compliance purposes, delta-9 THC is the standard, and the lab report must at least reflect THCA, delta-9 THC, and the Total THC results, but Total THC should not be determinative in whether a farmer has to destroy his crop.

*Industry impacts.* Commenters asserted that testing for THCA concentration, a component they argued which is not psychoactive, would vastly undermine the efficient production of hemp and the growth of the industry. Some comments supported the 0.3 percent THC standard, but said requiring testing for total THC goes beyond what is statutorily required, to the detriment of producers. Commenters argued that the difference between levels of delta-9 THC and total THC in hemp is significant, and that crops that would otherwise be compliant measuring only for delta-9 THC would not be compliant when measuring for Total THC. Comments asserted that testing for total THC with a threshold of 0.3 percent effectively lowers the allowable hemp THC level to an even lower limit.

Comments also described the correlation between total CBD and total THC production and explained that producers trying to maximize CBD production will not be able to do so successfully if total THC levels are restricted to 0.3 percent. One comment claimed that a farmer can produce hemp plants with up to 25 percent cannabinoid content while staying under 0.3 percent delta-9 THC limit, but that the farmer would have to plant twice as many acres of a less potent hemp variety to produce the same amount of CBD end product and stay compliant under the IFR's Total THC limit.

Several comments reported that some CBD hemp processors reject product with CBD amounts of less than 8 percent. According to comments, breeders have worked years to develop cultivars that meet the 0.3 percent delta-9 THC threshold, but many cultivars would not be compliant under the total THC limit. Comments predicted that with a standard of 0.3 percent total THC, growers will stop growing hemp for CBD because the risk is too high that their hemp crops will exceed the limit and be destroyed, defeating the purpose for growing crops for the potential high returns related to CBD production. Comments further lamented that the industry would lose investments they've already made.

According to comments, many States that have only been measuring delta-9 THC under 2014 Farm Bill pilot programs have developed companion

marketing programs that have been tailored to complement State hemp production programs. Comments asserted the total THC limit in the IFR would significantly impact these new and emerging markets and cripple the industry in those States, preventing them from selling their product.

Some comments claimed that common industry practice is to measure THC and THCA independently. Comments recommended USDA treat THC and THCA as two separate molecules and only be concerned with the amount of THC in a sample, rather than total available THC.

One comment recommended that if USDA wants to test for total THC, the limit should be raised to 0.694 percent, with negligence set at 1.094 percent, and that growers whose samples measure between the two limits should be allowed to retest samples with up to two certified labs of their choice at a cost of \$500 each. Another comment recommended that samples be tested for THC and THCA separately, with limits of 0.3 and 1.0 percent, respectively.

*AMS response:* The 2018 Farm Bill requires that State and Tribal plans provide a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp. In order to use post-decarboxylation, the sample must be heated or a conversion made to account for the lack of heating process. This means that the total THC must account for THCA and delta-9 THC.

Currently, some States and Indian Tribes use gas chromatography (GC) to test hemp. In GC testing, heat is applied to the sample which THCA, producing delta-9 THC (a psychoactive compound), so that the final delta-9 THC result is actually a total THC result. GC is the more traditional technique used for THC testing and GC results are typically reported as “delta-9 THC” without distinguishing that the reported delta-9 THC is actually total THC.

Liquid chromatography (LC) testing typically does not involve the use of heat, so the THCA in a sample does not decarboxylate. In LC, results for THCA and delta-9 THC are obtained separately and can be reported separately. Cannabis naturally contains more THCA than delta-9 THC; if the THCA concentration is ignored while testing by LC, it is improbable to correctly distinguish hemp varieties from drug varieties. A total THC needs to be calculated post-testing in order to determine the “post-decarboxylation” delta-9 THC value as required by the 2018 Farm Bill. In this way, all testing

methodologies report the same information.

AMS acknowledges that some States do not currently test for total THC and that switching to testing for total THC may have a negative impact on those State programs. Most laboratories that use LC obtain THCA results and delta-9 THC results in the same analysis, so the information should be readily available to incorporate a calculation for Total THC. The opposite is also true. If USDA was to ignore the statutory requirement of using post-decarboxylation or other similarly reliable methods and allow for THC levels that do not account for decarboxylation, States and Tribes that currently require testing for total THC could experience a negative impact. When States or Tribes use different methods to measure THC, it impacts commerce because producers are not all on the same playing field. Also, since total THC at 0.3 percent is harder to obtain, those States and Tribes currently using total THC have been potentially selling less or destroying more hemp. Further, many in the industry have already made the switch to total THC since the IFR was published, diminishing the impact.

AMS consulted with the Departments of Justice and Health and Human Services to develop the IFR. The Drug Enforcement Administration’s Analysis of Drugs Manual cites GC methodology, initially labeling results as delta-9 THC and then defining total THC and instructing how to determine compliance using total THC.

In order to provide flexibility to States and Indian Tribes administering their own hemp production programs, alternative testing protocols will be considered by AMS if they are comparable and similarly reliable to the baseline mandated by section 297B(a)(2)(ii) of the AMA and established under the USDA plan and procedures. Updated USDA procedures for sampling and testing will be issued concurrently with this rule and will be provided on the USDA website.

This final rule covers hemp production. Hemp products are regulated under the Food and Drug Administration and its various statutes.<sup>15</sup>

*Statutory Compliance and Congressional Intent:* Several comments expressed concern about regulatory inconsistency between the 2018 Farm

Bill language testing methods and the IFR requirements. Commenters urged USDA to reconsider the legislative record and Congress’s intent in passing the 2014 and 2018 Farm Bills. According to numerous comments, the plain language of the 2018 Farm Bill statute does not support the IFR’s requirement to test for total THC. Commenters asserted that if Congress had intended samples to be tested for total THC, they would have so specified, rather than making the specific reference to delta-9 THC in the statute. Comments concluded that concentrations of THCA in hemp should be irrelevant to its legal status under the regulations. One comment characterized “decarboxylated value” as a new legal term and questioned USDA’s authority under the 2018 Farm Bill to create such a term. One comment went on to say that the term “potential conversion” as appearing in the IFR is offensive because Federal criminal law does not convert a legal substance into an illegal one simply because the substance has the “potential” to be converted.

Several comments cited a letter from Senators Merkley and Wyden,<sup>16</sup> authors of the Hemp Farming Act of 2018 that was included in the 2018 Farm Bill, as evidence that the IFR wrongly requires testing of Total THC. In that letter, Senators Merkley and Wyden asserted that requiring hemp samples to be tested using methods by which the reported THC concentration accounts for the conversion of THCA to THC “is a complete reversal of the Congressional intent expressed in that law and requires testing that Congress specifically did not include.” Comments also asserted that the Farm Bill definition of hemp is clear in that “all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not” of the hemp plant are expressly lawful so long as the plant does not contain a delta-9 THC concentration of above 0.3 percent. Thus, according to these comments, the IFR required measurement of a lawful plant-based acid when distinguishing between hemp and marijuana under the Controlled Substances Act, and such a requirement contradicts the plain language of the Farm Bill and the spirit of the law.

<sup>16</sup> <https://www.merkley.senate.gov/news/press-releases/wyden-merkley-to-dea-interim-rule-on-hemp-contradicts-congressional-intent-by-criminalizing-intermediate-steps-in-hemp-processing-2020#:~:text=Authors%20of%20the%20provision%20in,by%20seriously%20misunderstanding%20hemp%20processing.> See <https://beta.regulations.gov/comment/AMS-SC-19-0042-0884>.

<sup>15</sup> The 2018 Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act).

One comment asserted that requiring test reports of THC concentration to account for conversion of THCA into THC effectively mandates that only test methods relying on post-decarboxylation be used, nullifying Congressional intent that other similarly reliable methods that don't require conversion of THCA to THC should be authorized. The comment recommended revising the rule to comply with the Congressional mandate to allow testing through other similarly reliable methods.

*AMS response:* AMS is not making a determination of Congressional intent when passing the 2018 Farm Bill provision for hemp. Instead, AMS is following the plain statutory language that states that a State or Tribal plan shall be required to include "a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian Tribe".

*International Impact:* Some comments asserted that the average global delta-9 THC limit is 1.0 percent. Others claimed that Europe has adopted a 0.3 percent THC limit, but that it applies only to delta-9 THC and not total THC. Comments contend that American hemp production required to comply with at 0.3 percent total THC limit will be disadvantaged in the international marketplace. Comments proposed that matching a global standard by establishing a higher delta-9 THC threshold or total THC limit would strengthen U.S. producers' market competitiveness. Other comments warned that reducing the domestic hemp supply by imposing the IFR's 0.3 percent total THC limit will incentivize importation of hemp biomass and hemp derivatives produced in countries with lower labor costs and less restrictive regulatory regimes, and that domestic hemp and hemp derivatives will be priced out of the market.

*AMS response:* The 2018 Farm Bill authorizes USDA to issue regulations to regulate the production of hemp and defines hemp in terms of the concentration of THC in a Cannabis sativa L. plant. A Cannabis sativa L. plant is considered hemp, and therefore not a controlled substance, if the THC concentration is not more than 0.3 percent on a dry weight basis. AMS does not have the discretion to change this threshold in the definition of hemp even if this threshold could impact the global competitiveness of U.S.-produced hemp.

### Calculating Total THC

The 2018 Farm Bill and IFR identified and described the procedure for testing THC concentration using post-decarboxylation or other similarly reliable methods. The term decarboxylated was defined in the IFR as the completion of the chemical reaction that converts THC-acid (THCA) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid. The term decarboxylated is also commonly used in science and is the precursor to the term "post-decarboxylation," which appears in the 2018 Farm Bill's mandate on the acceptable cannabis testing methodologies for identifying THC concentration levels. AMS adopted this definition in this final rule.

*Conversion Efficiency:* Many stakeholders opposed USDA's conversion formula described in the IFR. Comments claimed the IFR was based on 100 percent conversion efficiency, which is only achievable under controlled laboratory testing conditions and is not possible outside of a laboratory environment. One comment stated the IFR failed to account for the inefficiency of the decarboxylation process. Numerous other comments characterized the USDA formula as theoretical and explained that the realistic conversion efficiency is between 30 and 75 percent. For example, several commenters cited a peer reviewed study which found 72 percent to be a viable efficiency factor and provided the calculation formula: Total Potential THC =  $(0.72) \times [(0.877 \times \text{THCA}) \times \text{delta-9THC}]$ . Additionally, a commenter suggested USDA utilize three different conversion factor tiers (0, 30, or 70 percent) depending on the end-use varietal because the THC concentration varies by varietal. The commenter argued that the conversion factors should reflect the different end-uses.

One comment said the calculation for "Total Potential THC" should be defined and incorporated into the final rule because the decarboxylation percentage definition is critical for standardization and uniformity in the industry. Otherwise, according to the comment, States could adopt different decarboxylation percentages in their equations, causing confusion for growers. The comment gave the following formulas as examples: (Total potential THC =  $0.877 \times \text{percent THCA} + \text{percent delta-9 THC}$ ) as compared to (Total Potential THC =  $0.877 \times 0.70 \times$

percent THCA + percent delta-9 THC), assuming a 70 percent THCA decarboxylation to delta-9 THC rate.

Another comment explained the need to include delta-8 THC into any calculation for the future state delta-9 THC.

*AMS response:* Delta-8 THC only exists in a trace amount in marijuana which has a high Delta-9 THC concentration. The Delta-9 THC amount is already low in hemp, so the concentration of Delta-8 THC would be basically undetectable in hemp. A quote from the "WHO Expert Committee on Drug Dependence Critical Review—Isomers of THC" regarding the relative amount of Delta-8 THC to Delta-9 THC that can be found at <https://www.who.int/medicines/access/controlled-substances/IsomersTHC.pdf?ua=1>.

The above range means that Delta-8 THC occurs at a level that is roughly 1000 times less than Delta-9 THC. So, if Delta-9 THC was observed at 0.3 percent in hemp, then the Delta-8 THC concentration would be roughly around 0.0003 percent. This contribution is completely negligible and contributes nothing significant to the total THC content. The trace amount of Delta-8 THC is about 100 times less than the uncertainty (MU) of the test method, further demonstrating that it is insignificant and not worthy of consideration in the final assessment of THC for hemp compliance.

AMS is adopting the calculation provided in the IFR for determining total THC. However, the calculation has been clarified to explain the use of the molar conversion ratio to mathematically convert THCA to delta-9 THC. As written in the IFR, the calculation may have been misunderstood as containing a conversion efficiency factor, which is not the case. THCA cannot be added to delta-9 THC without accounting for the difference in molecular mass. Using stoichiometry, a molar conversion ratio (0.877) is used to mathematically convert THCA in terms of delta-9 THC. The molar mass of THCA is 358.47 g/mol and the molar mass of delta-9 THC is 314.45 g/mol. In other words, the mass of THCA has to be adjusted or multiplied by 0.877 to be comparable to the mass of delta-9 THC.

The 2018 Farm Bill requires that the THC content be expressed post-decarboxylation, which means that the conversion of THCA into delta-9 THC to account for the potential total THC in a sample must be taken into account. The term "potential" is used because it is not possible to readily, consistently, and reliably calculate the precise extent of

the conversion of THCA to THC under *any and all* circumstances. Therefore, the calculation for total THC assumes 100 percent conversion efficiency and is hereby retained in this regulation. The calculation for total THC [total THC =  $(0.877 \times \text{THCA}) + (\text{delta-9 THC})$ ] assumes that 100 percent of the THCA is decarboxylated, producing to delta-9 THC, meaning that it gives the maximum (or potential, or theoretical) total THC. The final rule includes a definition for total THC to provide more specificity on this issue. This is standard procedure for how theoretical yield is calculated in chemistry. The issue is that theoretical yield does not always equal actual yield. Just because a maximum total THC can be calculated does not mean that the maximum is always obtained; however, there is potential for this maximum to be obtained. The amount of THCA that actually decarboxylates, producing delta-9 THC, is dependent on multiple variables; primarily, the amount of heat it is exposed to and the amount of time it is exposed to that heat. These variables, in turn, depend on what is being done to a cannabis sample (tested via LC, tested via GC, used for smoking, used for extraction, etc.).

Incorporating the use of a conversion efficiency factor into the calculation is problematic due to these variables. Designating different conversion efficiency factors based on intended end use is not practical as the factors can still vary. For example, if an end-use of extraction is intended, there are many different types of extraction processes and even within one specific process there are still many different variables that will affect the conversion efficiency. Ultimately, there is no way to standardize a conversion efficiency factor based on end-use, methodology, or processing. The infrastructure does not currently exist to measure and monitor conversion efficiency.

In terms of conversion during instrumental analysis, many commenters referenced a study conducted by Dussy<sup>17</sup> that determined a conversion efficiency factor for a specific GC setup. The author of the study recommends determining THCA and delta-9 THC separately and calculating total THC (using the equation the IFR stated to use). The author says that “every total  $\Delta 9$  THC value determined after decarboxylation [by using GC] gives a minimal content

rather than an exact value”. Therefore, the author proposes that labs using GC should calculate their own method’s conversion efficiency and then apply their efficiency to their result to increase their total THC value to make it comparable to LC. This is the opposite of what many commenters are proposing in that they wanted LC methods to incorporate conversion efficiency into their LC results to make total THC lower. The further complication of this “opposite” approach is that it is impossible without having a single conversion efficiency which, as stated previously, cannot be agreed upon and can vary widely. Furthermore, no matter how the conversion efficiency was to be applied, requiring each lab to determine their own method’s efficiency would require significant effort.

Delta-8 THC is a cannabinoid that can be formed from delta-9 THC. It is typically only found in very small quantities in plants, if it is found at all, and is more often obtained by growing a plant with high delta-9 THC and then converting the delta-9 THC into delta-8 THC through an extraction and conversion process in a lab to make a distillate product. It is rarely included in total THC calculations and many labs do not test for it. Delta-8 THC is unrelated to the 0.3 percent delta-9 THC limit or the “post-decarboxylation delta-9 THC” that are defined and required in this final rule.

#### Similarly Reliable Testing Methods

The 2018 Farm Bill states that State, Tribal, or USDA plans shall include “a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp.”

The IFR included two examples of standard industry post-decarboxylation testing methods that meet 2018 Farm Bill requirements: Gas and liquid chromatography with detection. AMS selected these standard methods of chromatography as the best options for testing but also provided flexibility for alternative sampling and testing protocols if they are comparable and similarly reliable to the baseline mandated by the 2018 Farm Bill and established under the USDA plan and procedures.

*Comments:* Some comments expressed support for the use of post-decarboxylation. One comment described liquid chromatography as a preferable testing method over gas chromatography because there are no published methods for gas chromatography that show 100 percent

conversion of THCA to THC. Comments suggested liquid chromatography is more accurate and representative than gas chromatography. USDA received a comment that because Tribes often do not have ready access to gas chromatography and may only be able to access liquid chromatography, the rules need to allow for a more lenient formula.

Many more comments opposed the IFR requirement to use post-decarboxylation testing methods on the grounds that the IFR too strictly interpreted or unnecessarily developed regulatory requirements that are not consistent with the statutory language of the 2018 Farm Bill. Comments stated that USDA should be flexible and allow for measuring THC levels with “similarly reliable methods,” as provided in the statute. Comments claimed that the IFR’s exclusive endorsement of gas or liquid chromatography methods ignores this statutory flexibility. Comments further asserted that these two methods may overstate THC levels in hemp samples and that USDA should approve alternative reliable methods that may produce more accurate results.

According to some comments, reliable testing methods have emerged that do not necessitate decarboxylation to accurately measure THC concentrations. For example, comments claimed that some States recognize genetic testing that measures the ratio of cannabidiol to THC in a sample or that confirms a stable cultivar’s taxonomic determination in lieu of post-decarboxylation testing to verify compliance with THC limits. Comments explained that genetic testing could include testing seed or testing during early plant growth stages, instead of depending on chemical analyses to measure THC levels in mature plants, which may be inconsistent under unpredictable growing conditions or dependent upon the time of sampling or the specific part of the plant that is sampled.

Comments advocated removing the Total THC testing requirement and recommended USDA work with scientific and agricultural communities to ensure testing standards are established and similarly reliable methods are developed that will accurately identify and measure THC without the forced conversion of other cannabinoids, isomers, and/or acids.

*States Operating under 2014 Farm Bill Authority:* Comments said that USDA should recognize that States have been effectively regulating hemp production using approved testing methods under 2014 Farm Bill pilot

<sup>17</sup>Dussy F.E.; Hamberg, C.; Luginbühl, M.; Schwerzmann, T.; Briellmann, T.A. Isolation of  $\Delta 9$  THCA-A from hemp and analytical aspects concerning the determination of  $\Delta 9$  THC in cannabis products. *Forensic Science International*, 149, 3–10, 2005.

programs. Comments argued that by applying the IFR's new testing standard, certain hemp plants that are legally grown under one or more of the existing pilot programs are converted into plants that violate the 2018 Farm Bill.

Comments contended that while USDA will argue that States and Tribes can propose a testing method other than post-decarboxylation, the alternative method still has to measure potential conversion of THCA into THC.

Comments said further that the IFR must consider that hemp testing is an evolving science and that THC testing methods are likely to change over time. They stated that imposing new testing requirements is adding costs for growers, marketers, and regulators, and is limiting the number of labs that can perform these tests, for unnecessary and possibly impermissible reasons. Finally, comments questioned whether USDA has the authority to impose new testing requirements when the statute spells out the testing standards to be applied in granting approval to State and Tribal plans.

A comment cited case law that held that under the Administrative Procedure Act (APA), agency decisions must be reasonable and based on factors and evidence that support the decision, divergent views notwithstanding. It suggested the IFR is arbitrary and capricious under the APA because USDA (1) "has relied on factors which Congress has not intended it to consider," (2) "entirely failed to consider an important aspect of the problem," (3) "offered an explanation for its decision that runs counter to the evidence before the agency," and (4) has made a decision that "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." It further claimed that a court must sustain an agency's action unless it determines that the agency committed a "clear error in judgment." The commenter asked that their comment be considered within the context of these legal standards, and argued that THCA is not psychoactive; but can be converted into delta-9 THC through a chemical reaction, and that such a reaction may cause otherwise lawful hemp plants to test "hot." The comment projected further that such "hot" plants will require disposal, causing a significant and unnecessary loss of hemp production, which will in turn reduce economic development and job growth in many rural communities.

The comment said post-decarboxylation testing was not required under the 2014 Farm Bill pilot program and the same plants that are legal under 2014 Farm Bill could be

illegal under the IFR. The comment recognized that the pilot program will not be authorized after 2021 but said current disparate treatment under the two laws is problematic.

*AMS response:* The 2014 Farm Bill included a 0.3 percent THC level but did not include the requirement for this measurement to account for decarboxylation. Thus States have the flexibility to determine testing methodologies. The 2018 Farm Bill states that procedures for testing use post-decarboxylation or other similarly reliable methods to determine delta-9 tetrahydrocannabinol concentration levels in hemp. AMS stated in the IFR and further adopts the language in this final rule that at this time two methods meet this requirement for decarboxylation. The current acceptable testing methods include gas and liquid chromatography, including LC with UV detection. As other testing methods and alternatives are developed by industry, AMS will review and evaluate their compliance with the 2018 Farm Bill. At this time, genetic testing has not been determined to be a similarly reliable testing methodology.

This final rule provides States and Indian Tribes the option to develop different sampling methodologies based on end use, including grain and fiber, to better account for differences in these plants. Biomass only needs to be tested after remediation to ensure that the sample that represented the plant that once tested above the acceptable THC level did not result in the plant being a controlled substance. This final rule does not set requirements for testing final products—but hemp plants, regardless of their end use, must still use the same testing procedures.

Although the USDA plan does not allow for sampling based on end use, AMS will study the experience of States and Tribes that adopt methodologies based on end use. If it appears that the data and experience of those States and Tribe suggest that their methodologies may be adaptable to the USDA plan, AMS may explore a sampling scheme based on end use for producers under the USDA plan in the future through notice and comment rulemaking.

#### **License Application Period**

AMS received comments on the timeframe established in the IFR for submitting applications for a USDA license. The application period extends between August 1 and October 31.

*Comments:* Several comments opposed the August-through-October window for USDA license applications and renewals. They explained that many outdoor hemp crops are harvested

in September and October and that farmers are busy with harvest activities related to other crops as well during that time of year. Comments noted that farmers typically finalize decisions about the coming crop year during the winter, after having time to attend industry and trade conferences, enter into production contracts, and obtain crop loans and insurance. Thus, according to comments, a longer application window or a later application window would give farmers time to plan for the coming year and submit hemp production license applications as appropriate. Comments also noted that a longer application period would give producers time to complete the mandatory background check. Some comments recommended the application period be extended to December 31. Others recommended a winter application period of January 1 to March 15.

Other comments recommended even greater flexibility in application periods. Comments explained that harvest cycles for hemp growers may vary regionally and by operation type. They said a significant number of hemp operations involve year-round cultivation, maintenance of mother clones, clone propagation, indoor cultivation, and/or tissue culture. Time and resources to gather and submit paperwork would not coincide with the down-cycles in productivity and would strain these types of operations. Some recommended USDA adopt a year-round, rolling application period with different deadlines for different operation types or sizes. One comment said it was unclear in the IFR whether State and Tribal plans were required to adhere to the same window provided for under USDA's plan. Several comments urged USDA to provide greater regulatory flexibility at the State and Tribal levels to determine the appropriate application and renewal timeframes for their jurisdictions. An example was given of a State's agriculture department transitioned enrollment from a restricted to an unrestricted timeframe to better manage the logistical challenges related to the enrollment period.

*AMS response:* AMS agrees with the commenters opposed to a limited USDA license application window and will allow for applications to be submitted for a USDA license year-round. This will provide greater flexibility to hemp producers to determine when to apply for a license or renew their license. This decision recognizes the different regional harvest timetables and production types used by hemp producers, and how flexible timetables

may allow producers to prepare applications during lower level periods of production activity thereby reducing some of producers' burden on time and resources when the producer is planning the next planting cycle(s). States and Tribes can determine their license application window as it best meets their programs.

### FSA Reporting and Information Sharing

AMS received comments on the IFR requirement that hemp producers report acreage and provide licensing information to USDA's Farm Service Agency (FSA). Hemp producers must provide FSA information about their hemp crop acreage, such as its location and size, and must provide the producer license or authorization number issued under the hemp production plan under which they operate. States, Indian Tribes, and USDA must collect the same information, as well as other producer information, under their respective plans. USDA then assembles and maintains FSA and plan information and makes it available to law enforcement agencies, as required under the 2018 Farm Bill.

*Comments:* Several comments expressed strong support for FSA programs generally, acknowledging that FSA programs provide farmers valuable access to Federal programs and funding, and that registering crop acreage with FSA would help mainstream hemp production within agricultural communities. Comments noted that requiring hemp growers to register with FSA is similar to registration requirements for growers of other commodities and that FSA already compiles reports about other crops. However, many commenters opposed the requirement to register with FSA when they are already required to provide the same information to their licensing authority. Comments argued that the duplicative reporting requirement is unnecessarily burdensome to farmers, could be confusing, and could discourage farmers from seeking hemp production licenses or from growing hemp. One comment speculated that confusion about the duplicative requirement could lead to unintended violations by growers who don't comply. Other comments speculated that lower program participation would inhibit industry growth and deprive States and Indian Tribes of licensing fees that enable them to fund their respective production plans.

Comments noted that the statute does not specify dual reporting of crop

acreage to both FSA and the plan authorities under which they operate.

Several comments took exception with the IFR's assumption that most hemp farmers are already registered and familiar with FSA and its programs. Comments from some State agriculture departments asserted that within their jurisdictions most farmers in general do not already work with FSA.

One comment asserted that participation in FSA programs is voluntary and that hemp growers should not be precluded from participating in the commenter's State program because they forego FSA registration. Other comments suggested that farmers growing hemp for personal use and hemp farmers also growing medical marijuana may be hesitant to register crop acreage with Federal agencies.

One comment expressed concern about FSA staffing in rural areas and asked USDA to increase funding to support additional reporting obligations. Another comment suggested USDA develop and fund one standardized reporting program for all plans and growers that would decrease program reporting burdens for all entities. Some comments encouraged streamlining collection of crop acreage information by allowing the use of open-source GIS mapping instead of FSA data and reporting tools. Comments also suggested USDA could rely on States and Tribes to provide grower crop acreage and registration information since they already collect it. Several comments recommended eliminating the FSA registration requirement altogether.

*AMS response:* AMS acknowledges the FSA reporting requirement may present a hurdle for certain hemp producers, particularly new and beginning farmers, farmers in rural locations, and farmers located in Tribal territories. However, AMS determined that the FSA reporting requirement is essential for two key reasons: Real-time data collection and field-based resources.

First, USDA is required under the 2018 Farm Bill to provide law enforcement with certain "real-time" information about who is growing hemp, whether their license is in good standing with the regulatory body issuing the license, and the location(s) of where hemp is being grown. The daily collection of this information through FSA county offices enables USDA to easily transmit the required information to law enforcement. FSA maintains the technology necessary for data collection and geographical land identification. These tools will provide

easy access to information needed for law enforcement and for other agricultural programs. This information is compiled in one system, using an information sharing mechanisms currently used by law enforcement and which they are familiar with, and transmitted to law enforcement in a safe manner, which otherwise would not be as readily available through State and Tribal reporting. States and Tribes must provide information to USDA in a format that is compatible with USDA's information sharing system. USDA will work with States and Tribes on system format and other information necessary to share information.

Secondly, FSA's county network is expansive with over 2,000 field office locations. FSA offices provide services both in person and virtually to accommodate the needs of producers.

Its mission runs parallel to other USDA agencies including Risk Management Agency, Natural Resources and Conservation Service, and Rural Development, each of which provide a wide range of benefits and services to local communities. AMS noted that in many cases, FSA is co-located with other Federal, State and county-level government offices which means a variety of services are provided through one central location. These services frequently include information on insurance and risk management programs, conservation and irrigation technical expertise, agricultural credit for operating or marketing, and rural housing loans. As such, the requirement is considered by AMS to be particularly important to new and beginning farmers who traditionally are not familiar with the wide range of programs and services offered by Farm Service Agency and the other USDA agencies.

### Definition of "Lot"

AMS received comments on the definition of "lot" for providing geographical determination of hemp production and for sampling purposes. One comment explained that nursery operators and their field operating counterparts may need to file hundreds of permits for a single greenhouse under the IFR. The comment described as an example one greenhouse at a nursery, which may have upwards of 36 benches, in which each bench could have 20 different hemp varieties growing at any one time. The comment said that the IFR would require that single greenhouse to have 720 "lots," and based on most States' current rules, 720 containment plans, destruction plans, and transportation notices when any plants are moved—all possibly requiring agency approval prior to any action

being taken. It further explained that the growing cycle for nursery stock could be as short as five to six weeks, and different varieties could take their place. The comment said a nursery with five or six greenhouses on a relatively small acreage may have to register thousands of lots and submit thousands of associated plans. It recommended that such a nursery should only be required to designate the actual greenhouse or indoor growing structure itself as used for the cultivation of hemp generally, and the term “lot” should not be defined to include any restriction or limitation to the same hemp varietal. The comment proposed revising the definition of “lot” to mean a contiguous area in a field, greenhouse, or indoor growing structure used for the cultivation of hemp.

**AMS response:** In this final rule, AMS is clarifying that the term “lot” has the same meaning as other terms used by FSA, as found in 7 CFR 718.2, to mean the same production area, such as “farm,” “tract,” “field,” and “subfield.” AMS uses the term “lot” to help growers and oversight officials identify farm locations, field acreage, and variety (*i.e.*, cultivar). Although a hemp producer must report their “lot” information to FSA, when a producer visits the FSA office to report hemp crop acreage, FSA staff will determine the appropriate designation for the specific location(s) where hemp is being grown. FSA staff will not provide a “lot number” to producers as described in the IFR, but instead designate either a “field” or “subfield” as the unique identifying number. This number is considered equivalent to a “lot number.”

A lot must always contain the same variety or strain of cannabis throughout the area because the final rule requires lot-based testing.

### Certified Seed

The IFR explains that under the 2014 Farm Bill, various States developed seed certification programs to help producers identify hemp seed that would work well in their specific geographic areas.

**Comments:** Some comments concurred with USDA’s decision not to introduce a hemp seed certification program with the IFR. Numerous commenters said that such a program would not be appropriate, that it would be too difficult to regulate, or that it would be premature now. Other comments said a federal hemp seed certification program is not necessary because some States and Indian Tribes had already developed such programs for their jurisdictions or are capable of doing so. Numerous comments said they

recognized the difficulty of developing a hemp seed certification program but nonetheless urged USDA to pursue what they characterized as an important effort to allow for consistency among hemp producers when resources permit.

One comment asserted that seed certification is key to a regulated hemp industry and explained that certification is a common practice in the international seed industry. Several comments contended that USDA must develop a seed certification program to prevent hemp growers from purchasing and planting seed of unproven quality—or of the wrong varieties for their purposes—and risking unnecessary financial loss and regulatory violations. Comments claimed that hemp farmers already have difficulty verifying the origin, genetics, and reliability of hemp varieties currently on the market, and that a seed certification program would help farmers know whether seed they purchase is appropriate for their growing conditions or intended hemp product end-use. Numerous comments inferred that a seed certification program would identify hemp varieties that had been tested and proven to reliably produce compliant hemp plants in specific geographic areas.

Some comments argued USDA should not engage in hemp seed certification because plant genetic expression is influenced by environmental conditions and seed certifiers cannot guarantee plants will have THC concentrations within the acceptable range. Other comments countered that assertion and referenced a comment that reported on the analysis of cannabis genome trials and concluded that cannabinoid concentration is 80 percent or more controlled by genetics rather than environmental conditions.

Comments claimed that hemp varieties developed under proper breeding programs and certified in the European Union and Canada had been proven to have stable cannabinoid profiles across multiple regions. They suggest that comparable results could be achieved under a USDA seed certification program.

A comment claimed that the lists of acceptable/approved varieties provided by the processor and/or the governing authority in the State in which the hemp is grown needs to be updated soon and regularly. The policy language may be acceptable, but these lists need attention quickly so that ill-suited varieties are not planted and insured when planted outside of the area and not likely to perform as well.

Some comments asserted it is not necessary for USDA to develop a seed certification program now because the

Association of Official Seed Certifying Agencies (AOSCA) has already established national standards for hemp field crop cultivars and is reviewing issues related to the development of certification standards for feminized seed and clones of CBD hemp. Other comments recommended USDA adopt AOSCA standards in the development of a Federal seed certification system, and several comments said that some States have already adopted AOSCA protocols for production of certified seed for commercial sale to farmers. For example, a comment stated that a state currently recognizes 17 hemp seed varieties that have been certified for use in that state in accordance with AOSCA standards. The comment said the state encourages farmers to use certified seed when possible and the state intends to rely on certified seed to streamline the hemp testing program in the future.

A comment clarified that there is a difference between seed that has been certified according to AOSCA standards (or an international equivalent standard) for varietal purity, and seed that has been tested for THC or other compounds. It asserted that some State programs have confused the terminology and urged USDA to clarify the difference and promote use of certified seed for varietal purity. The comment said the hemp industry has access to numerous proven varieties and that plant breeders are making strides to develop more varieties with specific characteristics.

Numerous other comments reinforced the need for seed certification programs that ensure hemp seed meets high standards for proper labeling, reliable germination rates, purity, and the ability to produce healthy plants. Some comments supported seed certification under State or Tribal programs, claiming such localized programs have proven successful in areas where they’ve been developed and used, and saying that such programs promote crop predictability and reduce uncertainty for farmers. One comment asserted that not only seed, but clone certification is a must, to ensure that growers are getting what they think they are when they purchase clones from nurseries. Some comments asserted confidence in certified seed could be extended to crop insurers, who could provide coverage at prices that reflect reduced risk. Some comments suggested growers using seed certified under a Federal certification program should be indemnified against legal liability or financial losses related to production of hemp that tests higher than the acceptable THC level. Some comments suggested States and Tribes that adopt seed certification programs

for cultivars reliably producing compliant plants should be authorized to exempt such cultivars from hemp sampling and testing requirements or to employ random, risk-based sampling schemes supported by data about those cultivars.

*AMS Responses:* AMS is not establishing a seed certification program for hemp. The IFR explained USDA's decision to not establish a seed certification program was due to a lack of accurate data and the advanced technology necessary to develop such a program. The term "certification," as used here, means tested or verified and does not necessarily mean certified for seed varietal purity or genetics. AMS understands that some seed certification-related studies are already under way in different locations and that results of these studies are helpful in production risk mitigation. AMS recommends the use of hemp seed from varieties that have undergone a variety review, following the process outlined in the Federal Seed Act and associated regulations, (7 U.S.C. 1551–1611 and 7 CFR part 201), and produced according to AOSCA standards. These types of seed have been screened and tested for purity and are properly labeled. This final rule maintains flexibility for stakeholders to continue with trials of seed varieties and does not prohibit the use of any hemp varieties by industry. Updating the varieties list is a State and Tribal issue, as they developed them. This final rule does not address seed certification. However, USDA will consider such a program in the future if enough information is available. If there is sufficient data to support a program, USDA will explore adopting one through rulemaking under the APA.

Separately from this hemp production regulation, AMS administers the Plant Variety Protection Office (PVPO). This office actively accepts applications of seed-propagated hemp for plant variety protection. Under the U.S. Plant Variety Protection Act, PVPO examines new applications and grants certificates that protect varieties for 20 years (25 years for vines and trees). PVPO provides intellectual property protection to breeders of new varieties of seeds and tubers. Certificate owners have rights to exclude others from marketing and selling their varieties, manage the use of their varieties by other breeders, and enjoy legal protection of their work.

#### Regulations for Different Operations

The 2018 Farm Bill requires any producer growing hemp to be licensed either by their applicable State or Tribal authority or USDA. The IFR further required that an authorized sampling

agent collect samples from floral material for THC concentration testing in order to determine compliance with the Federally established THC threshold. Some operations growing hemp do not grow to the stage where flower material is present and as such cannot test the floral material.

*Clones and Cloning:* Comments noted there are a significant number of grower operations that cultivate and produce hemp plants year-round. Some of these operations grow hemp varieties and maintain mother clones and/or grow plants for clonal propagation or tissue culture propagation purposes. Comments explained that hemp varieties grown in these types of production systems do not usually reach full maturity. According to comments, before achieving the floral stage of development, many of these hemp varieties are sold and enter the stream of commerce as starter plants that other licensed hemp growers may transplant to a field or greenhouse to be raised to full maturity and harvest. Comments questioned how immature or juvenile hemp plants with no floral material to test can demonstrate regulatory compliance under the IFR.

*Microgreens:* Comments raised similar concerns about hemp raised and marketed as microgreens or other types of immature plants intended for human consumption, noting that these plants cannot be tested for regulatory compliance because they have no floral material to test. Comments encouraged USDA to develop a regulatory process in which THC concentration testing may occur for immature, non-flowering hemp varieties so that operations like those producing clones or microgreens can support the development of the hemp industry.

One comment representing a hemp cultivation and distribution corporation in several states provided a pre harvest test on a microgreen variety grown in two different States. One State test reported 0.17 percent total cannabinoids and the other test reported 0.0193 percent total cannabinoids. Based on these tests, commenter indicated that hemp leaf greens/microgreens and related crops are not in danger of excess THC.

*Hemp Research:* Numerous comments stated the need for a separate regulatory scheme to support hemp research. Comments explained that the plant breeding process by its nature requires breeders to bring multiple varieties of plants to maturity in order to evaluate their characteristics and potential use in ongoing hybridization projects. They said, for example, that plants with desirable characteristics such as frost

and drought tolerance or pest resistance must be identified and preserved, while plants with unwanted genetic traits or diseases must be separated and destroyed in order to stabilize the genetics for THC expression and other desirable traits and understand how environmental factors, disease, and insect pressure affect the expression of those traits. According to comments, the THC concentration in such plants could exceed the acceptable THC level in the IFR and plant breeders could find themselves in violation of the law. As well, they explained that the IFR's disposal requirement could force breeders to destroy valuable plant material and waste years of work, as well as funding.

Other comments asked USDA to support research into hemp pollination and drift. Comments reported industry concern that cross pollination could reduce the value of neighboring CBD flower crops. They asked USDA to focus on grain producing geographic areas and varieties to provide the science to support large acreage growers.

Comments explained that the IFR's THC threshold of 0.3 percent reduces the incentive to conduct hemp variety research because of the likelihood that many plants will exceed that threshold. For example, comments suggested the THC limit for hemp plants in licensed breeding programs could be raised to 0.6 percent or 1.0 percent or higher. They suggested breeders be allowed to raise plants to maturity, collect data and save seed for further research, and be required to destroy noncompliant plant material at the end of the growing season. Other comments suggested that breeders and researchers should not have to wait for hemp plants to flower and undergo testing before they can remove and destroy those plants with undesirable traits.

Comments asserted that hemp strains used in genetic studies authorized by the 2014 Farm Bill and compliant with other program regulations may now be in jeopardy due to the uniform application of the IFR's 0.3 percent THC threshold and plant disposal requirements. They noted how a regulation that requires the disposal of what was previously compliant hemp will undermine the efforts and millions of dollars invested by farmers and researchers. Other comments indicated that not having the ability to replicate certain genetic traits from a plant that is noncompliant can slow the development of industry.

Comments from and about university research programs suggested that USDA make land grant universities eligible for special research carve-outs or regulatory

exemptions to allow them to continue research efforts. Other comments suggested USDA define criteria under which researchers and other plant breeders could be eligible for special research program exemptions. They suggested USDA develop criteria for certification or qualification of hemp researchers and breeders, and some suggested those meeting specified criteria could be exempt from the IFR's crop destruction and reporting requirements, provided they adhere to other restrictions, such as prohibiting research material from entering the chain of commerce, disposing of non-compliant plant material, and limiting plot size. Some commenters noted that without such allowances their university administrators would not allow them to continue research with any form of cannabis, including hemp, due to concerns about Federal grant disqualification.

One commenter requested an exemption for Tribal research facilities so that they will not have to destroy all non-compliant plants.

Comments noted that USDA's National Institute of Food and Agriculture had not issued requests for applications on hemp research and that hemp was not listed for funding under the Specialty Crop Research Initiative. Comments suggested more agronomic research is needed to address current gaps in knowledge related to hemp production and management and to standardize seed.

*AMS response:* Due to the variability in immature plants across producers, States, and Tribes, and the lack of consistency across varieties, USDA is unable to establish or standardize an approach to dealing with immature plants for USDA licensees. However, AMS acknowledges operations that grow hemp for certain purposes that do not bring plants to their flowering stage like clones and microgreens, may not need to meet the same sampling and testing requirements as operations that grow flowering hemp. The final rule provides States and Tribes the flexibility to consider performance-based sampling protocols to address these concerns. As allowed under the AMA, States and Indian Tribes can be more restrictive and may impose sampling and testing requirements on these producers.

USDA also acknowledges that research institutions face special circumstances when conducting hemp research. Accordingly, this rule provides sampling and testing flexibility to these institutions and producers working with them to conduct hemp research under the USDA plan. Producers that produce hemp for

research must obtain a USDA license or a State or Tribal license. However, the hemp that is produced for research is not subject to the same sampling requirements or the requirements pertaining to non-compliant plants, provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level. USDA licensees will need to submit an alternative sampling method to USDA for approval and shall ensure the disposal of all non-compliant plants. USDA licensees shall also comply with the reporting requirements including reporting disposal of non-compliant plants.

AMS views this flexibility as necessary to help support research and development as it relates to hemp production by industry, particularly in its infancy. This decision allows these types of research facilities and institutions to oversee the study of hemp plants through trialing and genetics research. Over time, the flexibility provided by this final rule will help to stabilize industry by providing greater understanding of hemp genetics and how certain varieties respond differently to growing conditions in various geographic locations. All producers are expected to benefit from such knowledge as information about more stable and consistently reliable hemp varieties becomes available. Any non-compliant plants produced by research institutions as a result of research and development will still need to be disposed and disposal will need to be verified with documentation. Research institutions that handle "hot" hemp must follow CSA requirements for handling marijuana.

#### Sampling Agents

This final rule reiterates that samples of hemp collected for purposes of testing THC must be collected by sampling agents, or by Federal, State, Tribal or local law enforcement agents authorized by USDA to collect samples. Requirements and training materials for sampling agents are provided on USDA's website.

*Third-party Sampling Agents:* Some comments supported the use of third-party sampling agents to help offset the cyclical demand for hemp sample collection and to ensure integrity in the sampling process. Comments noted that some State agriculture departments have relied on in-house personnel to perform

sampling activities and that these States did not use or require third-party sampling agents during piloting.

One comment reported use of third-party certified samplers for the 2020 season, and as of the date of their comment, had employed 74 certified sampling agents. The commenter said the State recommends producers make appointments with sampling agents 30 days in advance prior to intended harvests, and that they had not received any feedback regarding unavailability of sampling agents based on the 15-day window. The comment went on to report that the State had received numerous anecdotes of next-day availability for sampling, which the comment suggested would not be possible without the use of third-party sampling agents.

*Resources:* Several commenters worried that there would be insufficient numbers of appropriately trained, USDA-approved sampling agents available during harvest periods to ensure that all crops could be sampled, tested, and harvested within the 15-day window specified in the IFR. They asserted that sampling backlogs and delayed testing and harvesting would cause crops to mature beyond the acceptable hemp THC content concentration, resulting in crop disposals and financial losses for farmers. Several comments said producers in rural and remote mountainous areas would be particularly impacted, since sampling agent travel into those areas would require extra time and expense.

Comments described how some States developed sustainable hemp oversight programs using risk-based sampling methodology to support regulatory monitoring of hemp growers. They asserted these same States would find it difficult to meet the IFR's sampling requirement because of a limited budget to hire and train additional personnel for sampling all hemp production. Comments reported having to make appointments for sample collection a week in advance under risk-based sampling plans and predicted it would be even harder to arrange for sample collection on a timely basis under the IFR's requirement that all hemp lots be sampled and tested.

Commenters presented two proposals to alleviate this strain—allowing producers to collect their own samples and reducing the volume of farms and plants from which samples are collected.

Some commenters requested that USDA compile a publicly available national list of sampling agents.

*Sampling Agent Training:* Comments highlighted the importance of providing robust training for sampling agents and recommended subsequent annual, documented refresher training be required. Some comments recommended USDA develop and implement a sampling agent certification scheme, while others suggested States and Tribes retain the authority to develop sampling agent training. Other comments suggested including a sampling agent training application on the USDA website.

*Other Comments on Sampling Agents:* Other comments objected to the IFR's provision that sampling agents be given unlimited access to all areas listed in the producer's license. Comments claimed that this provision, in addition to the fact that default sampling agents may also be law enforcement representatives, seems to associate the now legal hemp industry with potential illegal activity. Comments stated further that while State, Tribal, and USDA personnel may require such access for audits or other purposes, broad access is not necessary for sampling hemp, and that sampling access should be limited to cannabis plant material being cultivated as hemp.

Other commenters suggested that sampling agents should be agricultural specialists rather than law enforcement specialists in order to alleviate possible tension between Indian Tribes and law enforcement, and would ensure that the sampling agents have an understanding of the agricultural product they are working with.

*AMS response:* AMS agrees with the many commenters that sampling agent training should be enhanced. Standardized training for sampling agents will help achieve regulatory consistency. As such, AMS will provide training documents for sampling concurrently with publication of this final rule. The revised sampling agent training will establish uniform and standardized criteria, including sampling processes and procedures, to ensure the sampling agents understand regulatory provisions of this final rule and the appropriate processes associated with sampling activities. This will help ensure that sampling done by different agents will be conducted similarly. AMS anticipates this will minimize variances in sampling practices that may affect the samples and ultimately the test results.

Training documents will explain how sampling agents can meet the sampling requirements of this final rule. States and Indian Tribes with an approved plan may require the sampling agents used by their licensed producers to take

the USDA training, or they may develop their own custom training. This decision does not change the requirement that designated agents collect samples. We are retaining the requirement from the IFR that the use of third-party agents is acceptable. Requiring sample collection by trained agents ensures that samples are collected consistently throughout the industry and no conflict of interest exists between the sampler and grower.

Further, AMS has addressed commenters' concerns about adequate resources by allowing for States and Indian Tribes to design a sampling plan in accordance with the AMA and this final rule that suits their needs and resources. Additional discussion of sampling methodologies and flexibilities is included elsewhere in this final rule.

AMS agrees with the concerns that sampling agents be given unlimited access to all areas listed in the producer's license and is clarifying that sampling agents need access only to areas where the hemp is grown and stored so they can perform their sampling work.

AMS agrees with comments that allowing third-party individuals to become certified hemp sampling agents creates jobs, gives producers greater flexibility during the harvest season, and allows the States and Tribes to reallocate resources. The final rule does not limit sampling agents to law enforcement officers and does not prevent agricultural specialists operating as sampling agents. Because States and Indian Tribes with approved plans may approve their own sampling agents, USDA encourages States and Tribes to maintain their own lists of sampling agents.

### **Sampling Methodology**

AMS posted supplemental Sampling Guidelines for Hemp Growing Facilities on its website. The guidelines describe sampling procedures, including the number of cuttings to take for sampling each lot and how to pace a hemp field when sampling. A few comments addressed the Sampling Guidelines and recommended alternative sample volumes and field sampling patterns.

*End-use/risk-based sampling:* Commenters asserted that hemp sampling requirements should differ based on the crop's end-use, primarily whether the crop is used for grain and fiber production or for cannabinoid extraction. They contended that the IFR requirement to sample every hemp lot, regardless of the crop's end-use, is expensive and burdensome for States, Indian Tribes, and individual growers.

Comments generally discouraged requiring sampling and testing every lot for THC since THC concentration is significantly lower in male plants and grain/fiber varieties. Comments from State agriculture departments that administer pilot programs under the 2014 Farm Bill also explained how risk-based sampling requirements under their programs function. Comments emphasized that a "one-size-fits-all" regulation is inappropriate and discourages innovation as there are different risk-profiles for hemp based on its end-use.

Comments maintained that grain and fiber varieties are less likely than cannabinoid crops to exceed the THC threshold and argued that assessing all hemp by the same standard may result in strained oversight resources and inefficiencies. One comment asserted that THC concentration in varieties grown for grain is reduced dramatically by the production of seeds in the flower and, therefore, hemp grown for grain is at lower risk of exceeding the THC limit. Comments also noted that the flower parts, where a majority of the THC is concentrated, do not fairly represent the THC content of the entire plant, which is used in biomass and fiber production.

One State agriculture department noted that many of the seed and fiber varieties being grown in their State were originally bred in Canada and have been selected for low THC content as part of Canada's hemp program for many years. Several trade association comments noted that hemp grain/seed is not a source of cannabinoids, and that grain and fiber varieties are largely developed from certified, pedigreed seed that meets all THC testing standards. Commenters contrasted that with hemp crops grown for cannabinoids, and that the latter show higher phenotypic variability and lack of uniformity in the field because they have received less focus in breeding programs. One comment stated that hemp varieties grown for cannabinoid production often have questionable origins and are at a greater risk of producing higher THC than varieties grown for grain or fiber. Another comment claimed there are currently no certified varieties of hemp for CBD production.

Many comments agreed that hemp grown for cannabinoid production is more likely to exceed acceptable THC limits. Data from 2019 submitted with a comment showed that 13 percent of hemp samples tested exceeded 0.3 percent THC, and all were CBD varieties. The comment further recommends that certified seed varieties should be sampled and tested from a random selection of hemp grain and

fiber fields 30 days prior to harvest. For uncertified varieties, it recommends requiring a post-harvest test, as well as a pre-harvest test of a random selection of fields within 30 days of harvest. According to comments, those hemp crops being grown for cannabinoids should be subject to higher scrutiny and more frequent testing.

Another commenter cited data from the Midwestern Hemp Database<sup>18</sup> showing that many publicly available varieties are exhibiting a linear (or curvilinear) relationship between Total CBD (%) and Total THC (%). Given this presumed relationship, Total CBD percentages are often not able to exceed 8 percent without exceeding the regulatory threshold of 0.3 percent THC. The commenter said these moderate levels of CBD production can have significant impacts on profitability as growers and therefore a whole plant testing methodology would help to mitigate this linear relationship.

Comments identified States and other institutions where they think risk-based oversight modeling works to ensure hemp is at 0.3% acceptable hemp THC level. For example, the Kentucky Department of Agriculture publishes a "Varieties List" to track THC content across hemp varieties. Comments characterized this as a useful tool for hemp farmers when planning production cycles and selecting hemp varieties. Several comments also described how, at the State level, other measures support risk-based oversight, like randomized sampling crops of a percentage of the total grower population or the use of risk criteria to identify "high risk" growers. Commenters credited these types of practices and activities with allowing states to efficiently oversee hemp production under pilot programs. Other comments described how financial institutions routinely incorporate risk-based modeling into the risk assessment of lending decisions, and that similar modeling should be adopted by USDA for sampling and testing.

Comments argued that subjecting all varieties to the same regulatory requirements under the final rule will compound logistical challenges to oversight bodies, strain resources, and increase costs for low-risk farmers. They said testing based on hemp's end-use created a more flexible approach to oversight while benefiting the farmer.

Two state department of agriculture comments supported end use or risk-based sampling methods in order to

account for producers using certified seed, producing hemp for industrial use purposes, fiber, grain, seed, extraction of biomass, and indoor producers growing plants only in vegetative state for research or resale that pose a low risk for detectable THC content.

Several other comments suggested ways USDA could incorporate risk-based sampling into the domestic hemp production program. Comments recommended USDA evaluate and consider allowing greater regulatory flexibility for States and Tribes to develop and use risk-based modeling to guide their sampling and testing activities. According to comments, this approach would help offset the anticipated strain on resources during peak sampling that would otherwise result under the IFR requirements.

Two State agriculture departments recommended that crops produced from AOSCA-certified seed, which they said currently only include grain and fiber varieties, be considered low-risk for testing and compliance purposes. Comments said that as more CBD hemp varieties are developed and certified, they could also be subject to less stringent testing protocols.

A few comments suggested the adoption of a random risk-based sampling and testing scheme to reduce grower costs and relieve pressure on approved labs by reducing the number and volume of required tests. One comment indicated State hemp regulators have successfully developed sampling requirements for end-use that ensure adherence to State and Federal regulations, while allowing for flexibilities around State resources. Other comments sought requirements establishing a minimum number of cuttings per lot (e.g., "5" cuttings per lot regardless of size.) For example, one comment suggested that when sampling lots of less than 1 acre, taking cuttings of one plant will not allow for a representative sample, so a minimum of 5 plants be identified for cuttings. Another comment said that the sampling requirements in the IFR, as applied to a 170-acre field, could require the sampling of as many as 110 plants from that field which would be impossible for a state department of agriculture to meet. As an alternative, USDA might provide a fixed sliding scale (for example, a lot of less than 10 acres requires 5 plants; a lot between 10 acres and 20 acres requires 6 plants; and so on) rather than leaving those calculations to each state. Alternatively, another comment explained how their state sampling protocol currently utilizes the parameters of a minimum of 6 cuttings per lot or acre, whichever is

smaller, with the option for producers to increase the quantity of cuttings collected as they see fit (up to 150 cuttings per lot). Another comment described how contracted labs for their state have requested at least 40 grams of wet material and up to 60 grams if the licensee is also needing additional testing such as heavy metals, pesticides and mycotoxins.

One comment reported the results of a 2019 controlled study where the top 12 inches of the plant and the top 2 inches of flowering material were collected from each of 83 plants, for a total of 166 samples. The samples were tested using gas chromatography with flame ionization detection. Test results showing total delta-9 THC of the 2-inch cuttings were, on average, 0.0273 percent higher than results for the 12-inch cuttings. The comment interpreted the results to suggest that including vegetation from the entire plant yields lower THC results, and that all parts of hemp plants should be sampled because producers generally harvest the entire plant.

One comment reported that their State requires samples for any size lot to include 30 buds (subsamples) to insure there is large enough volume of material to provide for adequate sample testing. Another comment reported that State staff are directed to look at a cultivar and evaluate it for uniformity with respect to maturation, height, color, and basic plant architecture. According to the comment, uniformity within a cultivar results in fewer plants sampled than a cultivar exhibiting greater phenotypic diversity for the same acreage. The comment supported providing States with authority to establish sampling protocols, given the significant variation in plant counts between fields (on a per acre basis) and phenotypic diversity within and between cultivars. The comment also recommended that AMS provide guidance on a recommended number of plants to be sampled per unit area, including the plant density for each sample number recommendation.

One comment advocated revisions to USDA's sampling guidelines. The commenter said the State has had to deviate from USDA's sampling table, specifically for smaller lots. According to the comment, taking a sample from one plant does not provide enough material for lab testing, and the State has had to bear the cost of taking a second sample. The comment mentioned that some of the State-contracted labs have requested at least 40 grams of wet material and up to 60 grams, if the licensee is also requesting additional testing, such as for heavy

<sup>18</sup> <https://farmdoc.illinois.edu/field-crop-production/hemp/midwestern-hemp-database-a-new-tool-for-hemp-growers.html>.

metals, pesticides, and mycotoxins. The comment also explained that to keep from delivering excess material from large lots to labs, inspectors take the required number of cuttings, then homogenize the sample, keep the required 40 to 60 grams, and leave the remaining sample material in the field. The comment supported a sampling protocol that would provide adequate testing material without unnecessarily overcutting plants material.

One comment reported results of a poll they conducted among States after the end of the 2018 growing season. According to the comment, three States—New York, Pennsylvania, and Minnesota—reported they had analyzed the THC content in microgreens, and none were found to be above 0.3 percent total THC.

One comment reported that their State has tested every hemp lot produced in Minnesota in the past five years, and that hemp grown for grain and fiber has never tested above the 0.3 percent total THC limit. According to the comment, varieties grown in Minnesota are certified varieties found either on the Health Canada List of Approved Cultivars or the European Union's Organization for Economic Co-operation and Development List of Varieties Eligible for Seed Certification.

One comment reported their State has implemented a risk-based sampling frequency schedule, under authorities provided for in the 2014 Farm Bill, using end-use and certified seed as guidance. According to the comment, official total THC results collected from regulatory samples and formal research samples showed that hemp grown from certified seed have a low risk of testing above 0.3 percent. Additionally, the grain or stalk components of hemp have zero to negligible levels of total THC. The comment recognizes that more research is needed in this area but is confident that the utilization of hemp variety categories to determine the department's sampling frequency has been successful to date.

*AMS response:* AMS agrees that States and Indian Tribes need more flexibility in developing sampling methodologies. For States and Indian Tribes with primary regulatory authority, USDA is altering the sampling requirements in this final rule to allow performance-based sampling methodologies. Information submitted by States that participated in the 2014 pilot program show various ways these States are already using performance-based sampling. Some States are using a list of varieties that work in their geographical area while others rely on evaluation on what they consider high risk producers.

USDA finds the data submitted by commenters to be reliable because these States have been growing hemp since the 2014 pilot program started and they have sufficient data to develop their sampling plans. AMS agrees with commenters that the performance-based concept is the same method that financial institutions use. Further, performance-based programs are also used by other scientific and Federal agencies such as USDA's Food Safety and Inspection Service and FDA.

AMS finds that it makes sense to encourage States and Indian Tribes to consider performance-based alternatives when developing sampling plans. The final rule provides the standard; however, States and Indian Tribes have the flexibility to determine how to achieve that standard tailored to their specific needs.

The sampling requirements for State and Tribal plans allow for States and Indian Tribes to develop unique sampling protocols for hemp licensees under their jurisdiction. State and Tribal plans must include a procedure for accurate and effective sampling of hemp that meets the requirements of the final rule. The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level. Alternatively, States and Indian Tribes may design a sampling method that is performance-based that ensures, at a confidence level of 95 percent, that plants will not test above the acceptable hemp THC level. This plan must be part of the State or Tribal plan. A performance-based method may consider: (1) A seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe; (2) whether a producer is conducting research at an institution of higher learning or that is funded by a Federal, State, or Tribal government; (3) whether a producer has consistently produced compliant hemp plants over several years or several seasons; and other similar factors. USDA believes this will provide needed flexibility to States and Indian Tribes to develop logical and enforceable sampling requirements that take into consideration their unique circumstances. AMS will still require States and Indian Tribes to submit their individual sampling requirements for review as a component of the plan approval process. Sampling protocols submitted by States and Indian Tribes must comply with the thresholds established by the 2018 Farm Bill and this final rule. If performance-based

sampling requirements are not included in a State or Tribal plan, every lot, and thereby every producer must be sampled and tested.

When evaluating sampling protocols submitted by States and Indian Tribes, USDA will take into consideration whether the performance-based factors the State or Indian Tribe used have the potential to ensure compliance at a 95 percent confidence level. USDA licensed producers are required to comply with the sampling requirements in this final rule. Additional guidance on sampling for USDA licensees or States and Indian Tribes that decide to use these guidelines is available on the USDA website at <https://www.ams.usda.gov/rules-regulations/hemp/information-sampling>. USDA may develop a performance-based sampling in the future if data is available and if it deems appropriate. Separate rulemaking and comment process will be necessary to establish a performance-based sampling plan by USDA.

USDA plans to audit State and Tribal activities to assess program compliance with all Federal requirements, which includes review of the performance-based sampling implemented by States and Indian Tribes.

*Sampling Guidance:* A comment noted that although the sampling protocol was issued as a guideline, it appears to be binding with regard to how hemp must be sampled. The comment said AMS should clarify that there may be other acceptable sampling procedures that would meet the IFR's sampling requirement. The comment explained further that some States operating hemp programs under the 2014 Farm Bill have established detailed hemp sampling protocols that producers are used to and should be allowed to continue.

Another comment appreciated the IFR's provision that the AMS Sampling Guidelines may need continual updating and refinement as industry, academia, and government discover new evidence, science, products, and innovations.

A comment described the hemp field sampling plan they adopted from Florida's nematode sampling plan. The plan recognizes that nematodes are unlikely to be evenly distributed throughout an orchard or field, which would also allow for accurate detection of THC fluctuation within a hemp field. The comment said Florida's sampling plan is accepted by every State and country to whom they send citrus plant material that has been screened for nematodes and recommended AMS

revise the hemp Sampling Guidelines to incorporate Florida's sampling plan.

A comment said Kentucky requires cuttings from five plants per lot, believing this standard provides a reasonably representative sampling of the plants in each lot. It opposed the sliding scale in AMS's Sampling Guidelines, saying the sliding-scale calculation relies upon a decades-old pesticide residue sampling regime that may or may not be appropriate for calculating confidence levels in a hemp plant's THC levels. The comment asserted the sliding scale formula, which depends on a variable factor based on historical data, is likely to create state-to-state variations in the number of samples that must be collected, and would require States with historically lower rates of non-compliant THC test results to take more samples per lot than those States with historically higher rates of non-compliance, which the comment found to be illogical. The comment explained that applying the Sampling Guidelines' sliding scale calculation to a 170-acre field could require the sampling of as many as 110 plants from that field. It went on to say that sampling a single field under that scenario would overburden available sampling and laboratory staff, make transporting sample material difficult, and make grinding sample material an impossible workload. The comment recommended AMS specify a single number of plants to be sampled from every lot, regardless of the lot's size, or publish a fixed sliding scale for industry-wide use, rather than leaving those calculations to each State. This comment was supported by several state departments of agriculture.

A comment noted the importance of moisture content consistency in compliance sampling and recommends 8–12 percent moisture content standardization. They also noted the need for best practices to be identified for drying sample material.

Several comments said USDA's sliding scale sampling protocol results in too little a sample for small acreages and too large a sample for large acreages. Comments asserted, for example, that one cutting for four acres or less would not be suitable to collect a representative sample and could put small acreage farmers at a higher risk of being violative or not might be sufficient to capture uncertainty related to population variability in a newly established crop. Another comment said that a true representative sample needs to entail multiple subsamples collected spatially across a field and pooled into an average sample. Further, according to

the comment, since cannabinoids tend to increase along the height of the plant, floral material should be sampled at random heights from plants rather than all from the tops of plants to be representative.

Another comment recommended revisions to the Sampling Guidelines to provide that sampling agents should sample fields in a zig-zag pattern. The comment further recommended that AMS revise the Sampling Guidelines to provide that three cuttings should be taken from every plant sampled, and that the three cuttings should be taken of floral, stem, leaf and stalk material at three different points on the plant. It argued that floral material makes up only 25 to 30 percent of hemp plants and that, to be truly representative of the sampled plant, the sample should consist of cuttings of all plant materials from throughout the plant.

One comment recommended requiring that samples consist of a minimum of 4 ounces of material to provide an adequate amount for testing. Another comment suggested USDA research and review multiple sampling protocols and select the best among them.

*AMS response:* AMS agrees that establishing clear and standardized Sampling Guidelines is important for all hemp producers and States and Indian Tribes with primary regulatory authority over hemp. AMS issued Sampling Guidelines and is updating that guidance to reflect the changes from the IFR to this final rule. States and Indian Tribes with USDA-approved hemp production plans may develop their own sampling procedures that take into account regional and other differences and are performance-based, so long as those procedures meet the requirements in the regulations at § 990.3. The entirety of the State or Tribal sampling plan, including any guidelines, must be included in the State or Tribal plan submitted to USDA for approval. When developing such plans the State or Indian Tribe must follow the requirements of this final rule that relate to where the cutting takes place including only flower material, and the number of inches necessary for sampling. Specific to sample size or weight of a cutting, AMS does not agree that establishing a specific volume is prudent given the variances in flower size and densities, and different scales of hemp production. It would be difficult to consistently sample at an exact weight of plant material across the spectrum of producers and therefore is not included in this final rule. Rather, AMS specifies a length (approximately five to eight inches) from the “main

stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.

This is considered appropriate and fair to balance the collection of sufficient plant material necessary for compliance laboratory testing while avoiding the need to cut excessive and unreasonable amounts of plant material.

Further, AMS determined this final rule must provide some additional degree of flexibility for States and Indian Tribes in the development of their sampling plans, which is why as an alternative, this final rule allows for performance-based sampling methodologies in State and Tribal plans.

Flexibilities afforded to States and Indian Tribes developing their own hemp production plans will allow them to incorporate best practices, as those change and develop over time. For example, States and Indian Tribes can adapt field-walking patterns to various sized and shaped hemp grower operations. AMS believes that a national standard would be difficult to consistently apply given the various grower operations and that standard “zig-zag,” or letters “M” or “Z” walk patterns may not be feasible for sample collection of micro-acreage producers, very large scale producers or those with polygonal hemp lots.

As an alternative option, AMS has updated the Sampling Guidelines and Protocols in conjunction with the publication of this final rule. This resource document is available online and offers guidance States or Indian Tribes can adopt and incorporate into their own USDA-approved sampling procedures.

#### **Flower Versus Whole Plant Sampling**

The IFR requires the collection of samples from the flower material of hemp plants for laboratory testing.

*Comments:* Several comments expressed support for sampling only hemp flowers, as provided in the IFR, although many recommended changes to the overall flower material sampling requirements. Those recommendations and commenters' explanations for them are addressed in another section of the comment analysis. Numerous comments opposed the IFR's floral material sampling requirement, preferring instead composite sampling of the flowers, stems, stalks, and seeds, and asserting such samples would be more truly representative of the entire plant and lot. Numerous comments agreed that cannabinoid concentrations are higher in the flower than in other parts of the plant, and many comments

argued that sampling only floral material would cause more samples to inappropriately and unfairly test “hot” and lead to unwarranted and costly crop disposals.

Several comments said that sampling only the flowering material of the hemp plant is inconsistent with the definition of industrial hemp, as amended by the 2018 Farm Bill, which refers to the whole hemp plant. Comments asserted that the statute did not limit sampling to floral material and challenged USDA’s interpretation of the statutory sampling requirement. As well, comments argued that requiring sampling of only flowering material could lead to legal challenges from producers who would be forced to destroy hemp that may be statutorily compliant, but not compliant with the IFR. They recommended that the regulations provide for sampling the whole plant and that USDA define the term “whole plant” to include the flower, stalk, and leaves.

Some comments stated that sampling only flower material ignores the hemp grown for seed and stalk end-uses, and not for cannabinoids. Comments claimed that sampling and testing only flowering material would limit industry diversification in terms of producing hemp for biomass intended for uses other than THC production. To address this, several recommendations for revisions to the IFR’s sampling requirements were offered. Some comments recommended taking larger samples from prescribed parts of hemp plants that would include other than flowering material. For example, both State departments of agriculture and Indian Tribes recommended taking branch samples from two or more specified parts of plants that would include flowers, stems, stalks, and seeds, and proposed a range of sample lengths they considered appropriate, from 4 to 18 inches. Some recommended taking samples of the lower part of branches as well as flowering tips from the same plant. Several comments urged USDA to adopt risk-based sampling requirements that would better align with the intended end-use of hemp crops, like grain and fiber. Other comments recommended revising the IFR to allow States and Indian Tribes to design sampling requirements to meet the particular needs of producers in their jurisdictions, like producers who are well experienced with growing hemp and understand the potential to grow a non-compliant crop.

Commenters expressed the widely shared view that cuttings for hemp samples must come from various

locations on the plant, not just the top third as indicated by the Sampling Guidelines. They explained that marketable hemp product comes from a composite of the entire plant, not just the top, and asserted that flower material samples should likewise come from the entire plant to ensure the sample accurately reflects the lot from which it is taken. Comments also voiced the need for greater regulatory clarity on the size of the floral cuttings due to concerns that no regulatory requirements address floral collection by authorized sampling agents, and variances in types of materials collected may affect test results.

#### *Cannabinoid Concentrations:*

Comments described phytochemical characteristics of *Cannabis sativa* L and argued that samples taken from only one part of the plant are not representative of the whole plant. Some comments contended that flowers at the top of the plant have higher concentrations of THC and other cannabinoids—by as much as 30 percent, according to some—than flowers elsewhere on the plant. One comment cited a study<sup>19</sup> that found that top-only sampling, as prescribed in many State testing programs, leads to an overestimation of THC content by nearly 37 percent. The study stated that to better represent total crop THC levels, samples should be taken from the top, middle, and bottom of plants in equal quantities. Commenters asserted that sampling flowers from only the top of the plant could lead to incorrect conclusions about the lot’s compliance and lead to inappropriate and costly lot disposals.

Other comments contended that THC concentrations are not necessarily higher at the top of the hemp plant. One comment used data to show that the distribution of THC concentrations throughout hemp plants is not consistent between varieties. It cited a 2019 comparison study in which 4-inch cuttings of floral material from two hemp varieties were taken from the top, middle, and bottom sections of plants. In one variety, total THC was highest in samples taken at the top, and lowest in samples taken from the bottom of plants. In the other variety, total THC varied little between samples from plant top, middle, and bottom positions. The comment said the data refutes the belief that THC levels are highest at the top of the plant and supports sampling from all parts of the plant to obtain an

accurate representation of each lot’s composite marketable hemp product.

*Sampling technique:* Some comments cautioned that inconsistent potency measurements may be the result of divergent sampling approaches and recommended that USDA provide regulatory clarity as to the proper sampling process.

A comment encouraged USDA to establish clear numeric designations of how much floral material is taken from each plant. Comments varied in their suggestions on sample cut including: 12 inches per plant; cuts from the top and bottom 18 inches of a terminal branch of the plant to achieve a more representative sample; cutting from the top twenty centimeters from the main stem of the female plant; eight to ten inches of the plant’s primary stem; whole plant sampling whereby the top 1/3rd, middle 1/3rd and bottom 1/3rd are each sampled; and to ground the whole plant—not only the top 1/3rd—as that is not representative of the delta-9 THC level of the plant.

*AMS response:* The IFR required the collection of samples from the flower material of hemp plants for laboratory testing. Following the publication of the IFR, AMS made available at [www.ams.usda.gov/rules-regulations/hemp](http://www.ams.usda.gov/rules-regulations/hemp) a supplemental document addressing Sample Guidelines as a reference resource to industry. This resource document indicates that hemp samples are comprised of cuttings from just underneath a flower material located at the top one-third of the plant. Following review of public comment from various stakeholders, AMS determined this final rule will allow for additional sampling methodologies for determining the sample size from the lot as described previously under the “Sample Size” discussion. However, since THC is concentrated in the flower material of the plant, the flower material is more appropriate to test than the entire plant. The final rule specified pre-harvest samples shall be approximately five to eight inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant. This aligns provisions of this final rule with the common practices of several States that significantly participated in the 2014 Farm Bill hemp pilot programs. This decision further balances the need to collect a sufficiently large portion of the plant’s flower, where THC and other cannabinoids are at their most concentrated, and the need to avoid cutting a portion of the hemp plant that

<sup>19</sup> “THC Distribution in Field Grown Hemp Prior to Harvest,” J. Scott Lowman, Jack He, Mike Clark, and Mark Gignac; The Institute for Advanced Learning and Research (IALR), Danville, Virginia.

poses logistical challenges to shipment, drying and preparing for laboratory tests. AMS believes this provision will help standardize sampling across the nation.

AMS considered the differences of pre-harvest vs. post-harvest sampling and determined the most practicable way to identify THC concentrations of the plant is through pre-harvest sampling since the floral material is still intact. Floral material must be intact to assure the material submitted for testing is in fact the flower part of a hemp plant and it has not been compromised or mixed with other plant parts. AMS also considered the many commenters who endorsed “whole plant” sampling. AMS concluded that measuring THC concentration through floral material testing is more appropriate and practicable than testing the entire plant because testing the entire plant will dilute the THC concentration in the sample, except as allowable under remediation, as discussed elsewhere in this final rule. Further, the study cited by a commenter that shows THC concentrations throughout hemp plants are not consistent between varieties does not support the use of whole plant sampling because it compares different plant varieties, not the THC level on different parts of the same plant variety where the sample is taken. Accordingly, sampling the top part of the plant will provide the most accurate results.

Since THC is concentrated in the flower material of the plant, the flower material is more appropriate to test than the entire plant. AMS will modify the sampling requirement to state that the sample shall be approximately five to eight inches from the “main stem” that includes the leaves and flowers, “terminal bud” that occurs at the end of a stem, or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant. AMS believes this consistency will help establish a level playing field for all U.S. hemp producers. The Sampling Guidelines issued concurrently with this rule includes additional details.

AMS also includes additional flexibilities for disposal and remediation of “hot” hemp that would reduce the costs to producers. These are discussed later in this final rule and in separate guidelines published concurrently.

#### **Measurement of Uncertainty (MU)— Field Sampling**

The IFR did not address the subject of uncertainty when conducting field samples and only speaks to the measurement of uncertainty in

performing laboratory tests for regulatory compliance.

*Comments:* Several comments noted that not accounting for MU in sampling is a potential oversight that should be addressed in the final rule. Several comments note that field sampling is the largest source of variability in any testing process, due to the choices individual sampling agents make and field condition variability. Comments argued that there is a wide degree of variability among individual plants in a hemp crop and that this contributes to further uncertainty in field sampling. Due to this uncertainty in the field during sample collection, commenters suggested that an MU for field sampling be included in the final rule.

Several State agriculture departments argued that the MU value should account for variability in the steps that occur before a sample reaches the laboratory. Comments noted the various steps in the field sampling process, such as cutting, bagging, sealing, transporting, and handling, and explained that each increases uncertainty in the THC testing results before the sample even arrives at the laboratory for compliance testing. Commenters asserted that uncertainty related to each step in the field sampling collection process should be accounted for in the MU.

Several comments argued that, without a standardized MU for field sampling, some hemp crops with specific end-uses would be disproportionately impacted. According to comments, hemp crops grown for cannabinoids show the most phenotypic variability and lack of uniformity in the field. Comments said this variability should be accounted for before the sample reaches the laboratory.

One comment suggested following the ISO 15189 standards that take into account uncertainty sources during the analytical phase where the measurement actually occurs. Several comments requested that USDA establish a standardized method of calculating uncertainty resulting from sample collection procedures and for uncertainty in laboratory testing methods. One comment noted that USDA’s Sampling Guidelines do not require the USDA-approved sampling agent to communicate to the laboratory anything related to crop variations or the agent’s sampling methodologies that may contribute to uncertainty in testing the hemp crop for compliance.

A comment suggested a method for calculating MU that would include pre- and post-laboratory activities: MU would be calculated as the square root of the sum of squared values for pre-

and post-laboratory activities, or, (a) squared plus (b) squared = (c) squared, where (a) is field sampling activities and (b) is laboratory MU. The comment offered this example: *If the in-laboratory measurement of uncertainty (b) is calculated as 0.0300 percent, and the field sampling measurement of uncertainty (a) is estimated to be 0.0400 percent, then the total measurement of uncertainty (c) would be 0.0500 percent.*

An institute that commented discussed research which found that sampling from the whole plant more accurately reflected what was observed in a field. The comment explained how the current USDA method, which analyzes only the top 1/3 of the plant, generates data that is error-prone and results that likely do not represent the actual THC levels that are present in the hemp plants in the field as a whole. It said, for example, in one research field, THC levels ranged from 0.06 percent to 2.46 percent in the top 1/3 plant samples when individual plants were evaluated separately.

The research also found significant variation in THC concentration across plants, which the commenter attributed to the lack of ability of the sampling procedure to generate a consistent, reproducible sample from any given hemp field. The research found if the field contains plants that are not completely uniform in their THC levels relative to each other, it is possible that this small subsample in any given analysis could over-represent plants that have higher levels of THC, thereby leading to failure of the field. On the other hand, equally possible, that analysis could over-represent plants that have lower levels of THC, leading to passing the field. The research stated that the most likely result of a sampling test is an inaccurate assessment of the total THC levels based on the method used to sample the plants in the field and then prepare them for extraction.

A comment from a private laboratory noted that when field sampling and pre-analysis handling and processing is done properly and uniformly, the pre-analysis measurement uncertainty can be reduced to 5–10 percent. The comment suggested that test results might be more consistent and uniform when collecting samples in a “W” pattern with a minimum of 10–15 individual cuttings taken from the top and middle third of the plant.

Some comments recommended USDA conduct or fund a study to determine appropriate requirements for calculating sampling uncertainty.

*AMS response:* AMS appreciates the different suggestions submitted by commenters on ways to handle potential

variability and uncertainty associated with sampling. AMS recognizes that a variability in sampling may contribute to the overall uncertainty of the final result. For reasons explained below, AMS is unable to adopt a national standard for calculating the MU for sampling. However, States and Indian Tribes, may include one in their State or Tribal plan as part of their performance-based alternative method for sampling under § 990.3(a)(2)(iii).

In order to develop a standardized approach to sampling MU, a sampling plan must first be well-established, standardized, and studied to accurately account for uncertainty differences in sampling methodologies. To measure uncertainty of the complete process, from primary sampling through analytical determination, all steps in the process must be included. There are many intermediary steps that must be measured, such as sampling conditions, sample preparation, sample preservation, and transportation, all of which are not always present and/or completed the same each time sampling occurs. States producing hemp under the 2014 Farm Bill have developed sampling plans that vary widely; sampling MU is not something that can be easily studied, calculated, or broadly standardized. Due to the variability in sampling across producers, States, and Indian Tribes, and the lack of available data, USDA is unable to establish or standardize a specific MU value or boundaries (upper or lower) for general use.

In the future, standards organizations, such as ASTM International through their Committee (D37) on Cannabis, will be establishing sampling standards that States, Indian Tribes, and producers could use to improve or help control sampling uncertainty. USDA also recognizes that States and Indian Tribes may have or will conduct their own study of the sampling uncertainty within their States or territories taking into account the conditions that may affect sampling. Those States and Indian Tribes may be able to calculate or standardize the MU for sampling within their States and territories. For those reasons, States and Indian Tribes may incorporate a sampling MU as part of an alternative method for sampling under § 990.3(a)(2)(iii).

#### Post-Sample Harvest Window

The IFR required testing for total delta-9 tetrahydrocannabinol concentration levels and sampling for such testing was required to occur within 15 days prior to the anticipated harvest of cannabis plants. The IFR required sampling to be conducted by a

Federal, State, local, or Tribal law enforcement agency or their designee.

*Comments:* Numerous comments expressed opposition to the 15-day post-sample harvest window. Comments argued that a 15-day window is too short and urged AMS to make it longer, providing several examples of anticipated difficulties with the 15-day window.

According to comments, the 15-day sampling window in the IFR did not allow enough flexibility to reckon with adverse weather conditions that could delay or preempt field sampling and harvest activities. Comments said that isolated producers and others with limited access to harvest machinery might not be able to complete harvests within 15 days of sampling if weather prevents them from getting into the fields. Comments also noted that in some hemp production areas, climate changes are trending toward wetter harvest seasons, with frequent and catastrophic flooding in recent years. Other comments provided examples of climate variations across the U.S. and explained that the 15-day window is not uniformly suitable for all regions, some of which may be more prone to early freezes and other conditions that could forestall a timely harvest or force producers to harvest before receiving test results in order to save their crops.

Comments also pointed out that a 15-day window does not adequately accommodate a commonly employed two-phase harvest technique, wherein farmers first harvest the seeds and flowers and then the plant's stalks.

Comments additionally stated logistical challenges related to sampling on larger hemp farms or farms with several varieties. They asserted that the number of required samples greatly increased under the IFR from what was required under most State administered pilot programs, and that collecting, drying, and submitting samples for those additional lots will be very difficult within the 15-day window. A commenter stated that, in 2019, Colorado sampled only 23 percent of all registered hemp lots within a 30-day sampling window under the pilot program, while under the IFR requirements, they would need to collect more than four times as many samples in half the time.

Many commenters—from producers, state departments of agriculture, and Tribal governments—anticipated bottlenecks at laboratory testing facilities due to the limited number of DEA-registered laboratories available to provide testing. Comments from laboratories agreed that the increased demand for hemp testing

would strain existing resources and make it difficult to return results to farmers in time to complete harvesting within the 15-day window. One commenter from a private laboratory also noted the strain on human resources this would create to oversight activities because laboratory employees are required to accompany sampling agents through the sampling process within the window. Other comments noted a possible shortage of available farm workers during a tight harvest window.

Comments from Indian Tribes stated that the requirement to test within 15 days prior to harvest by DEA registered laboratories is not practical for Indian Tribes, explaining that many Indian Tribes were moved to desolate lands where growing crops is hampered by location, quality of the land, available water and infrastructure, and access to ready transportation. Further, Indian Tribes said growers are hampered by the economies of size. Comments suggested that in much of the Indian Tribe territories, Tribes will not be able to develop large farms that reduce risk.

Many comments recommended increasing the sampling window to 30 days. Some suggested that producers be allowed to harvest before the return of laboratory results, but not be allowed to release product until test results are obtained. One comment added that allowing post-harvest testing would incentivize farmers to monitor their crops prior to harvest in order to minimize the need to destroy crops. Another comment recommended that all hemp testing labs be required to return results to growers within 15 days of receiving samples. Other comments proposed revising the regulations to require only that harvest commence, rather than be completed, within the specified period following sampling.

Data on compliance testing from North Carolina<sup>20</sup> cited a recent study showed an average of 12.65 days taken to receive test results, with a range of between 2 days and 41 days. It estimates that 50 percent of growers would begin to harvest before receiving the results of their THC compliance test and 22.5 percent would complete their harvest without receiving their results.

Another State department of agriculture said it has been operating their pilot program utilizing a 25-day harvest window but noted that 25 days has proved an insufficient amount of time in their experience managing their pilot program. They recommend the

<sup>20</sup> <https://beta.regulations.gov/comment/AMS-SC-19-0042-5294>.

final rule utilize, at minimum, a 30-day sampling window.

A State extension service cited data from the Midwestern Hemp Database and reports from Rock River Laboratory which shows that 68 percent of the requests for THC compliance testing were submitted during the period of September 8th–October 1st and note this will create a tight peak window during which samples will be submitted. Due to this peak timeframe of compliance testing needs, several State departments of agriculture note that during these peak times there will be staffing shortages, delays in sampling, delays in analyzing material, delays in the reporting of results and delays due to unsuitable harvest conditions.

Another State department of agriculture recommends that certified seed varieties should be sampled and tested from a random selection of hemp grain and fiber fields 30 days prior to harvest. For uncertified varieties, it recommends requiring a post-harvest test, as well as a pre-harvest test of a random selection of fields within 30 days of harvest.

One commenter discussed data showing that different cultivars accumulate cannabinoids at different rates and at different times. Given the rapid changes in cannabinoid levels, the comment said its data highlights the challenges of scheduling pre-harvest regulatory samples and harvest dates.

Finally, a few comments asked for clarification about the 15-day window. Some said it was unclear whether harvest must commence or be completed within the window. Others asked whether a producer is prohibited from harvesting before testing is completed. One comment stated that the 2018 Farm Bill does not contain a timing requirement.

One comment reported that their current sample-to-harvest window is 25 days, and that it does not appear to be long enough to sample all the State's outdoor hemp crops maturing concurrently.

One comment reported that the IFR's 15-day harvest window is not feasible to implement and puts incredible stress on the developing State's hemp industry. According to the comment, the State applied a 30-day sample-to-harvest window during the four years it participated under the 2014 pilot program. During the 2020 growing season, the State reported it has struggled to sample and test the 5,809 acres and 1.46 million indoor square feet that comprise the fields and facilities of the State's 700 licensed growers within 20 days. The comment

claims that the State does not have the financial capability or staff resources to ensure sampling can be achieved at every field within the optimal and correct time.

Data analysis provided by North Carolina State University<sup>21</sup> evaluated the 2018–2020 turnaround times for labs reporting THC test results to growers on 3,317 lots. The analysis found that in 22.5 percent of cases, growers would have had to commence harvest with no knowledge of their test results to meet the 15-day harvest window requirement in the IFR. The comment asserted that in reality, growers would need lab results in 10 days or less in order to make informed harvest decisions, in which case they assumed approximately 50 percent of the state growers would have had to start harvesting without knowing their test results. The comment referenced NCSU farm cost studies that showed farmers with some equipment at their disposal will spend approximately \$14,000 per acre on hemp cultivation. Noting that of those costs, seed/plant acquisition and labor are the greatest expenses, the comment asserted that harvest is the most labor-intensive activity, and that requiring farmers to harvest without knowing whether their hemp crop is compliant or marketable puts them at great financial risk. The comment recommended extending the post sampling harvest window to 30 days to reduce financial risk for farmers.

A comment from another state noted that given the State's size and geography, distances between hemp production sites could be greater than 2000 miles, making the 15-day sample-to-harvest window impractical for them. The comment recommended allowing States and Tribes, who are better aware of their geographies and resources, to determine their own windows, up to 30 days.

One comment reported the State has three inspectors geographically dispersed throughout the State, servicing approximately 200 farms harvesting within the same 8-week time period. The comment advocated extending the harvest window to 30 days to cope with unforeseen weather events, extended travel, lab turnaround, resampling and testing, and other delays.

One comment contained preliminary findings from an ongoing 2020 study<sup>22</sup> conducted by a state and a state

<sup>21</sup> Ibid.

<sup>22</sup> Pearce, Bob et al. Sequential Sampling of Four Hemp Cultivars for Cannabinoids—2020; University of Kentucky, College of Agriculture, Food, and Environment and Kentucky Department of Agriculture. <https://beta.regulations.gov/comment/AMS-SC-19-0042-5762>.

university that showed different cultivars of hemp accumulate cannabinoids at different rates and at different times in plant maturity. Study data showed that some cultivars can rapidly accumulate THC and CBD, with weekly changes of as much as 0.1 percent THC and 1.5 percent CBD in some cases. The study found that the rates of THC and CBD accumulation were parallel in the four cultivars studied, with the CBD:THC ratio staying consistent around 24:1. The study concluded that given the rapid rate of change in cannabinoid levels, samples taken 2, 3, or 4 weeks prior to harvest may not accurately reflect the cannabinoid profile of the harvested material. The study further concluded that a larger harvest window increases the likelihood that non-compliant plant material will be harvested and potentially rejected at market, costing the grower the additional expense of harvesting.

*AMS response:* AMS recognizes weather and climate-related factors affect all cycles of agricultural production including pre-planting, planting, management, and harvest. AMS also understands these factors may vary by region from year to year, and that certain conditions might cause some farmers to alter their normal harvest timeframe as a result of factors beyond their control as mentioned in several comments. It is common agricultural practice to harvest crops taking into consideration weather patterns such as rain, wind or freezes. Producers also harvest crops based on the availability of labor and transportation, crop rotation and market demand among many factors. A 15-day harvest window may not allow producers the flexibility needed to take all these factors into consideration.

AMS considered the impact of the 15-day window on resources needed for sampling and testing activities. We acknowledge that sample collection may require an authorized sampling agent to visit multiple farms of varying sizes over a very short period of time. AMS further understands that in some places, the sampling agent may visit a farm on multiple occasions due to the size and harvest cycle of the farm. AMS also considered the turnaround time for producers to receive results from laboratory testing.

This final rule allows farmers to commence harvests before receiving test results, as did the IFR. However, crops may not be released in commerce or further processed until tests confirm that the lots in question are compliant with the regulations. Harvests must be completed within the 30-day timeframe

provided by the final rule. AMS does not believe harvests should occur after that time because, generally, total THC levels continue to increase with time and there is too great a risk that the levels would increase after 30 days and thus the sample that was tested would not be an accurate reflection of the total THC of the harvested crop.

Regarding comments on laboratory resources, AMS considered input from our Science and Technology Program, which conducts laboratory testing for numerous agricultural commodities and oversees our third-party laboratory approval program. AMS assessed testing activities, which include the receiving, selection, drying, processing (through liquid or gas chromatography), analysis, storage, and reporting of hemp test results. AMS considered the time necessary to ship samples to the laboratory and to issue test results back to the grower, recognizing that not all farms have readily available internet to expedite receipt of electronic laboratory notifications. Standard mail may be the primary means of communication for rural populations in certain regions and Tribal lands. AMS also considered the level of routine work at testing facilities across the nation and their capacity to efficiently process hemp samples while continuing unrelated, non-hemp laboratory activities. AMS agrees that it may be difficult at the peak of the season for high-volume laboratories to consistently issue timely results to growers, as producers experienced and DEA acknowledged, impacting growers' ability to make harvest decisions.

Based on comments received and knowledge of agricultural practices, AMS determined that the post-sampling harvest window should be extended to allow hemp harvests to be completed within 30 days after sampling. AMS believes allowing the additional time will provide flexibility for dealing with unforeseen weather events and other agricultural factors, and better accommodate complicated harvest processes. AMS also believes this will reduce strain on testing resources and ensure test results can be returned to growers on a timely basis.

#### **Laboratory Accreditation—Laboratory Approval Program (LAP) and International Standards Organization (ISO)**

The IFR required hemp growers to obtain testing from DEA-registered laboratories to ensure proper handling, disposal, and reporting of samples that exceed allowable THC limits for hemp and may therefore be controlled substances. As part of the IFR, AMS asked stakeholders whether laboratory

accreditation should also be required for hemp testing labs. Specifically, AMS asked about accreditation through AMS's LAP, through the ISO standards (ISO 17025), or through both, and if so, which would be preferable.

*Comment:* Comments reflected a range of views across the industry, both in support of and opposition to additional laboratory certification requirements. In general, commenters preferred more regulatory flexibility to address the widespread concern of insufficient laboratory capacity as a result of laboratory certification/registration/accreditation requirements imposed by USDA regulation.

*Supportive of LAP and ISO:* Some comments supported requiring additional accreditation through both LAP and ISO. Comments explained that LAP accreditation imposes analytical standards and limits that ensure reliable and consistent results across hemp labs, while ISO 17025 accreditation ensures that labs adhere to their own established protocols. Comments asserted that additional accreditation is essential to ensure that laboratories, government entities, and farmers comply with regulations. One comment that supported requiring both accreditations said the scope of the ISO 17025 standards should include hemp testing methods.

One comment said requiring LAP and/or ISO accreditation in conjunction with DEA registration is a step in the right direction because current standards are subpar and do the industry a disservice, while adding LAP and/or ISO accreditation would provide a baseline standard that benefits all stakeholders, including consumers.

*Either LAP or ISO:* Other comments advocated requiring additional accreditation through either LAP or ISO, but not both. Comments said that requiring one or the other would be adequate to provide testing integrity, but that requiring both would unnecessarily overburden labs and create a testing bottleneck as labs worked toward accreditation. One comment said that since hemp products are consumable, public health and safety should be of paramount concern when choosing a lab accreditation program.

Comments supporting LAP accreditation specifically said such accreditation would improve grower access to qualified labs and would improve the efficiencies and protect the competitive interests of non-DEA labs. Comments favoring LAP accreditation pointed out that LAP already incorporates ISO 17025 standards and includes regular audits and records management requirements. Comments

added that incorporating ISO standards into LAP accreditation lends confidence in testing procedures and results, which in turn creates a fair marketplace for hemp. They asserted that the benefits of LAP accreditation outweigh the costs because they emphasize quality controls and accurate analytical performance by knowledgeable and trained staff. One comment suggested that using LAP-approved labs would facilitate USDA's hemp program oversight and the development of an evidence-based data tracking system. Another comment pointed out that LAP offers growers a complete online listing of qualified labs from which to choose.

Some comments argued against adopting LAP accreditation, saying the accreditation process is expensive and burdensome for laboratories, and that the user-fee program benefits only USDA. One comment said that it is unclear from the IFR how LAP differs from ISO and whether LAP accreditation offers more confidence in test results than ISO accreditation. Another comment said that LAP accreditation would be redundant to ISO accreditation and is not necessary.

Some comments favored the use of laboratories with ISO 17025 accreditation in addition to or instead of DEA-registration. Comments noted that hemp laboratories in many States already have ISO accreditation, although some are not DEA-registered. They suggested use of those labs should be grandfathered into approved hemp production plans. Some comments asserted that between LAP- and ISO-accreditation, ISO is the best alternative for the hemp industry because it meets the needs of the hemp industry, and at a reported cost of \$25,000, it reduces unnecessary expense and regulatory burden for labs and growers. One comment recommended that USDA specify that the most current ISO 17025 standard be required for accreditation—the 2017 version.

*Neither LAP nor ISO:* Several comments opposed requiring additional laboratory accreditation on top of DEA-registration. Some comments called it "overkill," and said requiring additional accreditation would put an undue strain on laboratories and delay testing and reporting results for growers.

*None of the Above:* Several comments opposed specifying any particular laboratory registration or accreditation and recommended instead that States and Indian Tribes be authorized to determine appropriate standards for hemp testing laboratories under their respective production plans. Comments said that allowing States and Indian Tribes to determine their own lab

certification schemes would allow them to maintain appropriate testing capability while finding the best fit for the economic profile of their regulated jurisdictions. One comment suggested USDA encourage laboratories to participate in the Hemp Proficiency Testing Program established by the University of Kentucky, rather than building an accreditation program from scratch through LAP.

**Other Alternatives:** One comment asked USDA to clarify why any additional accreditation should be required. Another comment suggested that if laboratory accreditation is necessary, AMS should explore the most cost-effective choice from among LAP, ISO, or other commercial accreditations to minimize costs for growers. A comment suggested that DEA-registered labs not be required by the rule but be allowed as backups for labs with other accreditations. Another comment speculated that if only LAP or ISO accreditation were required, and DEA registration was not, growers would test their crops more frequently. Some comments recommended that no specific accreditation be required because the process is too costly and time consuming and would discourage labs from participating in the program. One comment suggested that USDA encourage labs to adhere to ISO 17025 standards, but not require accreditation.

Some comments suggested that LAP accreditation would be beneficial to the industry, but that such a program should be developed incorporating the expertise of former DEA or other chemists with experience testing cannabis. Other comments supported using ISO-accredited labs until LAP accreditation can be fully developed and used on a trial basis to gather adequate experience and data. One comment suggested allowing States, Tribes, and USDA to contract with commercial labs or use private labs that adhere to ISO standards.

**AMS response:** AMS noted that commenters generally preferred more regulatory flexibility to address the widespread concern of insufficient laboratory capacity as a result of laboratory registration requirements outlined in DEA regulations. Adding ISO 17025 or other accreditation requirement to laboratories would decrease the number of laboratories available to perform hemp tests. AMS also noted some commenters opposed accreditation requirements due to cost implications and additional burden. While we strongly encourage laboratories to be accredited to ISO/IEC 17025 (by an International Laboratory Accreditation Cooperation Mutual

Recognition Agreement (ILAC MRA) signatory accreditation body), because it will help ensure lab results are more accurate, ISO 17025 accreditation requires significant time and financial commitment to pursue and maintain. This it is most challenging for smaller and start-up labs. The initial accreditation can cost \$5,000–\$10,000 (and in some case more) and yearly ongoing costs are \$3,000–\$8,000. Smaller labs may not have the resources to pursue accreditation in a timely manner or they may have to spend more time and money for consultants to assist them in setting up a quality management system and to navigate the application and audit processes.

Based on this input, AMS will not require USDA administered lab approval program or require ISO 17025 accreditation because doing so would increase the financial burden on producers and reduce the availability of laboratories that can test for THC level in hemp. AMS is committed to continue looking into this option.

#### **DEA Laboratory Registration Requirement**

The IFR required that laboratory testing of hemp for the purpose of determining compliance under the program be conducted by laboratories appropriately registered with DEA. However, on February 27, 2020, USDA announced guidance delaying the requirement to use laboratories registered with DEA for testing. Under this guidance, testing can be conducted by labs that are not yet DEA-registered until the final rule is published, or Oct. 31, 2021, whichever comes first. This deadline was later extended to December 31, 2022. This change was intended to allow additional time to increase DEA-registered analytical lab capacity.

**Comments:** A few comments supported the DEA-registration requirement. Some comments favored dual laboratory accreditation (e.g., DEA and ISO 17025 accreditation or DEA and AMS LAP accreditation) saying that such combinations would assure technically competent, unbiased testing and results reporting. One comment agreed with DEA lab registration but said that labs that have applied for DEA registration by Nov 1, 2020, should be allowed to continue testing (as under pilot programs) as the certification process takes so long. It further observed that while the IFR seemed settled on HPCL as the testing method, the rule does not specify the detection method as it should. The comment recommended mass spectrometry as the most accurate.

Another comment agreed with DEA lab registration, saying that otherwise, any lab could be handling controlled substances without observing stringent DEA requirements. The comment argued that allowing any lab to test hemp creates an unfair business advantage for non-DEA labs that do not have to pay high costs of maintaining DEA registrations. Further, those non-DEA labs would be handling controlled substances inconsistent with Federal law.

More commonly, comments opposed the DEA-registration requirement for hemp testing laboratories. Commenter concerns were as follows:

**Logistics:** Numerous comments stated there are not enough DEA-registered labs to handle the volume of samples required under the IFR's sampling and testing regulations. Comments predicted that such limited capacity would exacerbate existing bottlenecks, greatly increasing the likelihood that THC levels in sampled crops would continue to rise while farmers wait for test results. Several comments noted that the IFR allowed farmers to harvest sampled crops before receiving test results, however many prefer not to expend time and money harvesting a crop that might not be marketable. Comments also anticipated growers' testing fees would increase to cover the addition of testing resources at existing DEA-registered labs.

Some comments noted that not all States or Tribal lands have DEA-registered labs within or near their boundaries. According to comments, where DEA labs do exist, they are generally located in urban areas at some distance from rural farms. They explained that the scarcity of DEA-registered labs in reasonable proximity to farms will increase costs for transporting samples and increase the turnaround time for obtaining test results. Some comments submitted by Indian Tribes also asserted that the DEA had failed to consult with Tribes about its accreditation process and that it failed to timely respond to Tribes' requests for lab results.

**Accreditation:** Comments said that DEA-registration is costly and time consuming for laboratories and that such expenses would discourage existing labs from seeking DEA registration. One comment said that DEA accreditation is too expensive to be required for "low-level THC testing." Comments suggested alternatives, including:

- Allow testing by labs accredited under ISO 17025
- Allow testing by labs approved under AMS's LAP

- Allow testing by labs accredited by States or Tribes
- Allow testing by labs accredited under other accreditation programs
- Allow testing by labs with dual accreditation (e.g. DEA and ISO, or DEA and LAP)
- Allow continued testing by labs approved to do so under the 2014 Farm Bill
- Allow for a transition period to allow labs time to work toward registration

One comment suggested that allowing for alternative laboratory accreditation would increase competition between labs, reduce costs for growers, and reduce the potential bottleneck created by allowing for only DEA-registered lab testing.

Another comment argued that although accreditation is costly, relying on it could help enforce strict standards and ensure less variability between testing labs. Some comments suggested USDA fund accreditation of private labs to help offset the cost of expensive accreditations and encourage more labs to seek necessary accreditation.

Other comments suggested DEA expedite its lab approval process and make it easier for existing labs to obtain DEA registration.

Other commenters stated that the DEA lab accreditation process requires State approval and not Tribe approval and that this is unworkable because of occasionally difficult relationships between some Tribes and States and because hemp is prohibited in a couple of States.

Finally, several comments recommended AMS provide a phase-in period of as much as two years to allow existing labs to continue hemp testing while they work toward DEA registration so the industry will have access to adequate testing options during its development.

**DEA and Controlled Substances:** Comments expressed concern about many aspects of DEA's involvement with the hemp program. Comments argued that hemp is a legal agricultural commodity under the 2018 Farm Bill and requiring testing by DEA labs insinuates hemp is a controlled substance regulated under the Controlled Substance Act. Commenters asserted that treating hemp as a controlled substance exceeds the intent of the 2018 Farm Bill. Comments also suggested USDA's IFR impeded Congressional intent to foster the development of a new agricultural sector.

One commenter representing a processor of hemp, specifically for CBD products, said they were concerned

about an IFR published by DEA and that the rule by DEA could inadvertently criminalize hemp at various stages of its production process. They encouraged USDA to eliminate DEA's involvement.

Comments also said DEA involvement in USDA's program discourages participation by laboratories and by growers, neither of whom may care to risk prosecution for inadvertent criminal acts if a test result indicates they raised or possess a controlled substance. Some comments said private labs with ISO or other accreditation don't want to obtain DEA accreditation, fearing the tension it will cause between themselves and their grower customers because of the requirement to report potential criminal activity. Other comments said growers fear repercussions related to possible felony prosecution for growing crops considered illegal, including loss of chemical application permits that allow them to manage other crops. One comment argued that it isn't necessary to involve DEA in hemp testing, that it distracts that agency from other vital Federal work.

According to some comments, most DEA-registered laboratories are crime labs that do not offer commercial testing services. As reported by a State, the DEA may be reluctant to even visit—let alone approve—certain laboratories because of the handling and testing of marijuana, although considered legal by the State. Other States with legal medical and/or recreational marijuana provisions commented that their labs may not want to seek DEA registration because they choose to focus on marijuana testing. Some comments said labs that handle marijuana may not in fact obtain DEA registration, thus laboratory capacity to process hemp samples at the volume and speed required by the IFR may not materialize.

One comment assumed DEA-registered labs might test only for cannabinoids, while other commercial labs would be able to perform additional testing, for instance for microbes, heavy metals, and pesticide residues, saving growers the additional expense of multiple tests.

Some comments recommended USDA waive the requirement to use DEA-registered labs in States where recreational marijuana is legal, thus increasing the number of labs available for hemp testing. Other comments recommended DEA change its standards to allow labs that handle legal marijuana to also handle hemp.

**Cost Management:** A few comments suggested that restricting hemp testing to DEA-registered labs creates a monopoly among labs that already have

such accreditation or have the financial backing of large, vertically integrated companies to enable them to do so. Comments recommended that existing State, Indian Tribe, university, or other Federal labs with demonstrated ability to perform testing according to USDA standards be allowed to do so, thus providing opportunities for more interested participants and keeping testing costs down for growers. Some comments suggested USDA contract with State, Tribe, or Federal labs to provide required testing. Other comments recommended capping costs for DEA-registered lab testing at \$25–\$50 per test.

**Alternatives:** One comment asked USDA to clarify whether all independent labs must be DEA-registered to test hemp or whether only State labs needed to obtain that accreditation.

**AMS response:** In consultation with the Department of Justice, AMS determined it must retain the provisional requirement that laboratories testing hemp for the purposes of regulatory compliance be registered with DEA. This requirement further extends to any laboratory testing hemp throughout the growing season to informally monitor THC concentration. The basis for this determination is rooted to the statutory requirements of the Controlled Substances Act (CSA), which requires any laboratory that might potentially handle a controlled substance to undergo the DEA registration process. The CSA states that it is unlawful to possess a controlled substance (21 U.S.C 844) and requires any laboratory that might potentially handle a controlled substance to undergo the DEA registration process (21 U.S.C. 822) with a few specific exemptions. Further, 21 CFR 1301.13 includes categories that require registration with DEA, including chemical analysis where laboratories fall.

AMS is aware through stakeholder comment that many stakeholders oppose the DEA registration requirement. AMS is also aware of widely held concern among stakeholders, especially Indian Tribes, that an insufficient number of DEA-registered laboratories exist and have limited accessibility to those in rural or regional locations away from metropolitan areas. AMS understands how this combination of variables leads to delays in sample processing by DEA-registered laboratories and how this affects producers' harvest timetables. AMS also knows that since the IFR was published, numerous laboratories have applied for registration and DEA is

working diligently to process these requests. For this reason, DEA is delaying enforcement of this requirement until December 31, 2022. AMS anticipates this delay will provide adequate time for testing facilities to obtain DEA registration.

While we understand the commenters' concern about DEA involvement, the 2018 Farm Bill distinguishes hemp from marijuana, a controlled substance under DEA's regulatory authority, based on the THC concentration level in the cannabis plant. Although a producer may have intended to cultivate hemp, it is possible that the plant is marijuana because of the THC concentration level. If that is the case, the producer would then be subject to DEA regulations and jurisdiction. USDA coordinated with DEA so that producers that inadvertently produce marijuana may be able to take remediation steps consistent with DEA's regulations to avoid potential criminal liability. Additionally, the 2018 Farm Bill makes clear that negligent production of hemp will not subject the producer to criminal enforcement activity. *See* 7 U.S.C. 1639p(e)(2)(C).

AMS also acknowledges that some laboratories believe the DEA-registered laboratories are crime labs that do not offer commercial testing services and DEA may be reluctant to approve laboratories because of the handling and testing of marijuana, although considered legal by the State. However, AMS does not have any information that would support this belief. AMS is aware that DEA continues to add laboratories to their approved list.

Accordingly, any laboratory testing hemp for purposes of regulatory compliance must be registered by DEA to conduct chemical analysis of controlled substances (in accordance with 21 CFR 1301.13). Registration is necessary because laboratories could potentially handle cannabis that tests above the 0.3 percent concentration of THC on a dry weight basis, which is, by definition, marijuana and a Schedule 1 controlled substance. Instructions for laboratories to obtain DEA registration, along with a list of approved laboratories, are available on the USDA Domestic Hemp Production Program website.

Laboratory accreditation options are discussed earlier in this rule. USDA does not have any authority over the DEA's laboratory accreditation process.

DEA's IFR published August 21, 2020, (85 FR 51639) is out of the scope of this final rule.

### Measurement of Uncertainty (MU)—Laboratory Testing

The IFR required that laboratories calculate and include the measurement of uncertainty (MU) when they report THC test results.

*Comments:* Several comments expressed support for requiring that the MU be accounted for when testing the THC concentration of hemp due to the variability in laboratory testing equipment and complex mathematical principles involved. Comments generally emphasized that the inclusion of a standardized MU was needed for the industry to develop, as hemp farmers should not be exposed to risks of economic loss that are created by mathematical inconsistencies within an individual laboratory's computations. Several comments emphasized the importance of USDA clarifying the method for MU calculation in the rule because it is part of what determines whether hemp must be disposed.

One commenter cited a study<sup>23</sup> that found that test results on samples from each field sent to five different labs deviated significantly, ranging from a low of 22 percent deviation to a high of 41 percent depending on the field.

Some comments expressed the need for a standard, specific MU in the final rule to prevent licensees from "shopping around" for laboratories with the most lenient testing. Comments noted there is no universally accepted way to calculate MU, so differences in MU values used by various laboratories are just as likely to result from differences in calculation method as they are from differences in instrument quality or use. Several comments explained that the lack of a standardized MU in the rule incentivizes inaccuracy by potentially driving customers to laboratories willing to use MUs with greater ranges.

Many comments advocated specifying an MU to create uniformity in testing across the nation. One comment noted that variation in MU values could be problematic for interstate commerce and result in a hemp crop that is compliant in one state being shipped to another state where it would be considered noncompliant. Other comments argued that it may be too soon in the scientific process for USDA to include a standard MU because laboratories, particularly in States that didn't previously have cannabis programs, haven't had time to do the research necessary to determine an appropriate MU.

Comments from States that administered pilot programs under the 2014 Farm Bill offered several suggestions on approaches to MU calculations. A comment recommended using laboratories participating in the University of Kentucky—Division of Regulatory Services' Hemp Proficiency Testing Program to establish an MU through a set of guidelines rather than in the rule. The commenter concluded that the Hemp Proficiency Testing Program could be tasked with calculating and announcing an MU that would be used for compliance testing purposes on a nationwide basis. The comment added that including the MU in the guidelines rather than in the rule would allow it to be refined over time as instrumentation and calculations develop, rather than having to modify the hemp regulation.

Some comments advocated having multiple testing methodologies to choose from and including requirements for calculating MU for each method. Other comments recommended that instead of requiring a specific MU, USDA should determine a maximum threshold for allowable MU value. Comments argued that a maximum threshold would prevent forum shopping by consumers looking for laboratories with the most lenient MU ranges, but still allow laboratories to use their own calculations. One comment recommended revising the MU provision of the IFR to include a maximum uncertainty level that laboratories cannot exceed and suggested the maximum uncertainty value should be one-third or less of the target uncertainty. Another comment suggested USDA use guidelines from the United States Pharmacopeia for determining THC concentration, which include calculations for significant figures such as MU.

A comment asked USDA to clarify the role of significant figures in using MU to determine total THC concentration because, they argued, in both of the IFR's examples for determining compliance, the lower end of the range can be written as 0.3 percent, if rounding to match significant figures. It suggested requiring the lower value of the THC calculation distribution range, which accounts for uncertainty, to be less than or equal to 0.30 percent rather than 0.3 percent.

One commenter stated that for the cannabis plants exceeding the acceptable THC levels, USDA should incorporate a MU for laboratory deviation of .0500 percent for the many different variable ways that a sample arriving at a laboratory could result in an inaccurate test. This includes cutting,

<sup>23</sup> Evaluation of methods used to sample hemp for regulatory compliance testing;" Gang, David R. and Anna Berim; Washington State University, Pullman, WA; 2020.

bagging, sealings, transporting, handling, and other pre-laboratory activities.

One comment cited guidance from the National Institute of Standards and Technology providing that assigned uncertainty should be small relative to the total uncertainty targeted for test samples. The comment asserted that, as a rule of thumb, assigned uncertainties should be about one-third or less of the target uncertainty to ensure that uncertainty in the certified value will have negligible influence on the results of measurements. According to the comment, laboratories with well-developed processes will provide the most accurate and precise results and their uncertainty will be very small. The comment advocated that USDA provide an uncertainty range that cannot be exceeded by participating laboratories, thereby reducing the risk that producers will shop for laboratories with the widest uncertainty. The comment asserted that such a provision would also improve data comparability across the hemp industry.

*AMS response:* AMS appreciates the different suggestions submitted by commenters on ways to improve the calculation of MU and also acknowledges the variability in laboratory testing equipment that may exist. However, based on the input received and limited data available at the time of its review, AMS will only require that hemp testing laboratories complete a MU calculation as part of the mathematical test result for THC concentration. This final rule does not establish or standardize an upper or lower boundary for general use by laboratories to calculate a measurement of uncertainty. MU is typically not standardized, but rather is controlled using test methods controlled by performance standards (e.g., AOAC Standard Method Performance Requirements 2019.003 that can be found at <https://www.aoac.org/resources/smpr-2019003/>).

USDA does not recommend establishing a MU upper limit (maximum) because (1) MU is typically not standardized, but is controlled using standard test methods, and (2) USDA does not have the data to set an upper limit, so setting it would be arbitrary, not scientific. The hemp and scientific industries are just beginning to discuss standard test methods, and the final rule does not establish an explicit test method. Setting an upper limit or maximum MU does not resolve the core issue and would not encourage or drive labs to improve accuracy and precision.

Setting an upper limit would in effect be setting a maximum or absolute MU.

This may encourage labs to adopt the maximum MU as their MU, rather than drive for a smaller uncertainty. USDA may allow for establishing limits in the future, if needed, once methods are established and USDA has access to Proficiency Testing results and the reported MUs.

Additionally, this rule retains the flexibility for State and Tribal Departments of Agriculture to include specific requirements regarding MU for laboratories conducting hemp regulatory testing under their specific state or Tribal hemp programs if they meet the minimum standard set in this final rule. AMS encourages State and Tribal regulatory agencies to coordinate in developing proficiency and testing methods, similar to the program administered by the University of Kentucky, but participation in these types of programs is not required by this regulation.

### Disposal

The IFR stipulated that cannabis exceeding an acceptable THC level must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under the CSA, rather than hemp.

*Destruction vs. Disposal:* Several comments noted that the 2018 Farm Bill specifies only “disposal,” of hemp testing above the acceptable THC level, yet the IFR required “destruction” of such material. Comments argued that the IFR’s destruction requirement is an overreach. Comments asked USDA to revise the regulations to require only disposal of non-compliant plants or plant parts, and to provide either general parameters or specific provisions regarding acceptable methods of disposal. Several comments asked AMS to provide or expand the requirements for disposal of non-compliant material.

Although a few comments supported destroying non-compliant hemp crops, most comments that addressed the topic argued against total crop destruction if alternative disposal methods are available and practical. Comments explained that crop loss is financially devastating to growers—and doubly punitive if the grower must pay to destroy the crop—as well as a waste of valuable resources that could be repurposed and provide at least some return to growers. Comments explained that crop destruction can be a drain on limited official resources, depending on the availability of law enforcement personnel and equipment for the potential need to collect, transport, and oversee the destruction of non-

compliant plant material. Further, a comment from an Indian Tribe noted that requiring crop destruction is culturally offensive to indigenous people that traditionally use every part of every animal and plant that can be utilized.

*Disposal Methods:* Several comments asserted that the only disposal methods available under DEA regulations are incineration or chemical digestion and argued that the current rules under the CSA are designed for disposal of pharmaceuticals and chemical-based illegal drugs, not for the disposal of agricultural crops. Comments asserted that incineration by DEA is not efficient or environmentally sound, and in some places may not be allowed. They noted that burning crops releases harmful carbon dioxide and other pollutants into the air, contributes to the risk of wildfires, and wastes valuable plant nutrients that could be used elsewhere.

Numerous comments stated that the rule should provide alternative methods of disposal for non-complaint hemp plants to protect growers against total crop loss and preserve valuable resources. Several comments recommended USDA adopt disposal rules established under their various State and Tribal regulations. Comments suggested growers be allowed to mulch or disc the non-compliant crop into the soil at the farm, which would build up soil nutrients, improve soil water holding capacity, and improve soil tilth. Other comments suggested growers could recuperate some of their investment by marketing non-compliant crops for other non-ingestible or non-consumable products like fiber, building materials, biofuel, biochar, bioplastics, and animal bedding. A few comments suggested growers should be permitted to export or ship non-compliant hemp to countries or States that have legalized recreational or medical marijuana. Numerous comments recommended a surgical approach to disposing of non-compliant plants by allowing for the removal and disposal of only the plant parts testing over the acceptable THC level, while allowing growers to market the remaining parts. One comment suggested the Federal Government could buy non-compliant crops for no less than 50 percent of the market value and use them to manufacture paper, plastics, and fuel for government and military uses. Other comments proposed remediation as an alternative to crop destruction; comments on remediation are discussed in another section of this comment analysis. One comment suggested further research be conducted to identify appropriate alternatives for crop disposal, and one comment

suggested that industry stakeholders, governments, regulators, and law enforcement officials work together to develop disposal options under the program.

*Disposal Oversight:* Several comments recommended that States, Indian Tribes, or local authorities be allowed to determine appropriate crop disposal methods for their jurisdictions. Comments further recommended that State, Tribal, or local regulatory officials be authorized to oversee disposal of non-compliant hemp, as several have done prior to the establishment of the Domestic Hemp Production Program. One comment recommended further that hemp disposals handled by the State should not imply criminal intent on the part of growers. Comments said that allowing for local oversight would reduce strain on DEA and other law enforcement resources and ensure disposals can be handled on a timely basis. One comment from a State agriculture department said that when law enforcement officers have been invited to attend crop disposals in their jurisdiction, officers are typically unavailable. Other comments argued that growers should automatically become DEA-registered reverse distributors if their test results exceed acceptable hemp THC levels so they can dispose of the non-compliant crops themselves and provide acceptable evidence (e.g., photo or video) that they have done so, or so they can do so in the presence of regulatory officials. Some said USDA should pay for official oversight of crop disposal or there should be no charge for that service.

Comments noted that AMS had not yet posted disposal guidelines on its website at the time those comments were submitted, although the IFR had committed AMS to doing so. Some comments said interested entities were unable to complete applications for program participation because AMS had not yet provided disposal requirements.

Several comments asserted that DEA regulations do not mandate specific disposal methods, so long as the “desired result” is achieved. Comments asked for more specifics on DEA disposal procedures, including what disposal methods or processes were allowed under the IFR, what the timeline is for disposal, and what results are desired.

One comment asked whether all of a grower’s crops would be disposed if one of the lots tested above the acceptable hemp THC level. Others asked whether marketing non-compliant crops for non-ingestible and non-consumable products would be considered a form of disposal. One comment asked whether USDA

would consider providing crop insurance for losses due to disposal of “hot” crops. One comment asked whether stored hemp product produced under previous programs that allowed for higher THC levels would be disposed under the new program, or could be “grandfathered” in.

One comment contended that certain language in the IFR was inconsistent, and as a result, the IFR could be interpreted to require disposal of hemp that does not meet the IFR’s definition of hemp, rather than the disposal of hemp that does not meet the acceptable hemp THC level.

*AMS response:* AMS received significant comments on this requirement from State and Tribal regulatory agencies, producers, and other hemp industry stakeholders and based on this input, AMS determined it necessary to include specific on-farm hemp disposal activities and to provide oversight flexibilities.

As explained in the IFR, State and Tribal plans are required to include procedures for ensuring effective disposal of plants produced in violation of this Part. As part of its review, AMS noted the cultural implication of the use of the term ‘destruction’ and accordingly amended the regulatory provision to clarify the disposal activities required of growers in cases when a sample tests above the acceptable total THC level.

AMS also determined that producers benefit from greater regulatory flexibility to control on-farm disposal activities according to production schedules that are not dictated by the availability of reverse distributors to physically witness disposal activity. State and Tribal plans must still include procedures to verify disposal. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements the direct growers to provide pictures, videos, or other proof that disposal occurred successfully. State and Tribal plans must also include requirements to submit to AMS the monthly disposal report documenting any on-farm disposals that occurred during the prior month. Additional information on specific disposal methods is available to producers, State, and Tribal oversight agencies is available on the AMS website.

Disposal through the agricultural practices appearing in this final rule reflected those allowable under the IFR, and previously published to the AMS web page in February 2020. These included plowing under, mulching/composting, disking, bush mower/chopper, deep burial, and burning.

These activities align with normal and routine production actions by farmers. AMS believes specifying these activities help hemp growers determine which activity best supports their operation to transition non-compliant crop into a non-retrievable or non-ingestible form. These methods also allow recycling non-compliant plant materials back into the earth, a viewpoint AMS learned through public comment to be especially relevant for producers practicing cultural conservation practices. AMS recognized that controlled burning is the closest farm practice to incineration but controlled burns may not be a viable option for producers in some places due to wildfire risk or state prohibition against using controlled burns.

### Remediation

The IFR stipulated that cannabis exceeding the acceptable THC level must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under CSA, rather than hemp. In addition, the IFR stated that noncompliant plants may not be further handled, processed, or enter the stream of commerce, and that the licensee shall ensure the lot is disposed. The IFR did not stipulate any provisions to allow for remediation activities that reduce the THC concentration to levels within the acceptable limit.

*Remediation of non-compliant crops into compliant plant biomass:* Numerous comments expressed support for remediation of non-compliant plants to help farmers mitigate against financial loss. Comments claimed that not having remediation options would be a barrier to industry growth because farmers would be unable to bear the financial risk of losing crops. One commenter used 2019 production and economic data to project that applying the IFR to 2019 statewide non-compliant test rates (17 percent), farmgate losses due to crop destruction could have totaled \$842.6 million in Colorado.<sup>24</sup> According to the comment, adding losses related to lost processing and manufacturing due to the same crop destruction could have brought the economic cost to approximately \$1.2 billion. It suggested that allowing for remediation of non-compliant crops testing between 0.3 and 1.0 percent THC in the same scenario would preserve

<sup>24</sup> Polis, Jared; Phillip J. Weiser; and Kate Greenwood: State of Colorado Comments in Response to USDA Establishment of a Domestic Hemp Production Program; <https://beta.regulations.gov/comment/AMS-SC-19-0042-3358>.

about \$798 million in direct farmgate value, or \$1.1 billion of total economic value for the State.

Numerous comments explained that non-compliant plants can be remediated by chemical processes that either remove and destroy THC or dilute THC concentrations, thereby transitioning the remaining material into biomass blends which then test at or below the Federally allowable THC threshold of 0.3 percent. Thus, according to comments, crop remediation through one of these processes is a viable alternative to total crop loss. Some comments suggested processors could be registered with DEA to handle such remediation processes to ensure THC is extracted, handled, and disposed or marketed legally. Other comments suggested that USDA could issue processor permits to allow them to handle hot crops to bridge the perceived legal gap between farmer and consumer. Some comments further suggested growers could bear processing costs then retake possession of the remaining biomass for use or sale elsewhere. Several comments suggested growers themselves could be allowed to merge “hot” lots with lots testing below allowable hemp THC limits to create a compliant, homogenized blend.

Some comments suggested non-compliant crops could be remediated by removing the only flowers and retaining the seeds and stalks for other use. Other comments argued that the IFR testing provisions conflict with CSA provisions that exempt seeds and stalks of plant material from the definition of marijuana, and several comments urged USDA to modify the IFR to require only that the parts of the plant exceeding the THC limit be destroyed.

One comment advocated that States be allowed to remediate non-compliant crops through milling and blending the harvest lot to include the entire plant to a homogenized state, then retesting the lot. The comment included the results of a comparative analysis based on crops that initially tested over the legal threshold of 0.3 percent total THC during Arizona’s 2019–2020 growing season.<sup>25</sup> According to the comment, producers opted to attempt remediation as described for a total of 25 lots representing 568.6 acres of hemp. Of the 25, 19 lots representing 507 acres successfully reduced the total THC amount to be compliant, for an 89.71 percent recovery of acres that would otherwise have required disposal. The

comment reported that the average amount of THC was reduced by 31.61 percent, and suggested that while this remediation process might not be successful for crops that are significantly over the legal threshold, and while the market value of the resulting biomass may be reduced, the process may allow growers to recover some of their losses.

One comment<sup>26</sup> reported on a survey of all Minnesota hemp growers who had experienced lot failures since the beginning of their pilot program in 2016. According to the comment, reported losses varied greatly, ranging between \$22,000 and \$70,000 per year. The comment further described the State’s analysis of 1,492 hemp lot samples from 2016 through September 2020, which showed that 10.3 percent tested at or above 4.0 percent total delta-9 THC, although there was no indication of non-compliance with program rules or of illegal drug activity on the part of growers. The comment recommended that States and Tribes be allowed to develop remediation plans to salvage non-compliant crops.

*Post-harvest sampling and retesting:* Several comments suggested retesting post-harvest samples to confirm THC levels. Comments provided examples of some State agriculture departments that implemented post-harvest sampling and testing processes under the 2014 Pilot Programs. For instance, one comment cited results from the 2018 season in which they allowed post-harvest retesting of hemp plots that originally tested between 0.4 and 1.0 percent THC. The comment said under Kentucky rules, farmers were allowed to choose between immediate destruction of the leaf and floral material of the crop, without additional testing, or paying the \$250 fee for a post-harvest retest of harvested and ground up hemp material, in which the THC concentration was diluted. It stated that of 29 growers whose lots tested between 0.4 and 1.0 percent THC, 22 chose retesting and none of those returned a second measurement above 0.3999 percent THC. Thus, those growers were able to realize a return on their investment. The remaining seven cases did not elect to retest—five elected to destroy the entire plant and 2 destroyed only floral and leaf materials, salvaging the stalks. The data showed the acreage destroyed represented approximately one percent of total acreage. The comment concluded that post-harvest

grinding and retesting offers a viable economic solution for farmers seeking to recuperate their investment on crops that initially test non-compliant. Other comments urged USDA to provide for retesting provisions, including remediation activities, that more favorably support farmers who seek to salvage crop value. Some of these comments requested that USDA clarify retesting procedures if a harvest has already occurred.

*Statutory implications:* Comments from Tribes and other stakeholders expressed concern that the 2018 Farm Bill only requires “procedure for effective disposal,” and urged USDA to allow producers greater regulatory leniency as they become familiar with growing a new crop by permitting alternative remediation methods that do not require crop destruction.

*AMS Response:* This final rule covers testing of the hemp plant to determine acceptable THC levels as required by the 2018 Farm Bill. This final rule does not cover testing for seeds and stalks individually nor does it cover processing or the licensing of processors.

As described in the IFR, hemp exceeding the acceptable THC level may not be further handled, processed, or enter the stream of commerce. The licensee shall ensure the disposal of the noncompliant crop. Before such disposal occurs, AMS believes it important and necessary that hemp growers be provided the opportunity to remediate THC from non-compliant crops in order to stave off financial risk associated with the loss of investment in their hemp crop.

AMS agrees with comments that consider remediation as a viable activity for farmers to minimize crop loss and to salvage the value of remaining compliant plant material. For this reason, the final rule provides regulatory flexibility that allows remediation activities—either disposing of flower materials and salvaging the remainder of the plant or blending the entire plant into biomass plant material. Through both forms of remediation, the farmer may be able to minimize losses and, in some case, produce a return on investment. A guidance document will be published with this rule to illustrate approved remediation techniques. USDA will also finalize the guidance document on disposal techniques.

Additionally, AMS determined that pre-harvest sampling and testing yield the truest measurement of THC concentration at the point of harvest. AMS further maintains this position in this final rule. AMS notes that if the test results show the original THC

<sup>25</sup> Caravetta, John: Arizona Department of Agriculture Additional Comments on USDA Interim Final Rules on Domestic Hemp Production; <https://beta.regulations.gov/comment/AMS-SC-19-0042-5645>.

<sup>26</sup> Petersen, Thom: Minnesota Department of Agriculture Comments on USDA Interim Rule: Establishment of a Domestic Hemp Production Program; <https://beta.regulations.gov/comment/AMS-SC-19-0042-5548>.

concentration exceeded the Federally allowable limit, the licensee may request the laboratory retest the pre-harvest sample. This retest would not entail the use of post-harvest plant material. However, if the farmer elects to perform remediation activities under a USDA, State or Tribal plan, an additional sampling and testing of the remediated crop must occur to determine THC concentration levels. Only those crops testing below the acceptable hemp THC level limit will be considered successfully remediated and thus allowed to enter the stream of commerce. All other remaining non-compliant crops must then be properly disposed.

AMS believes the inclusion in the final rule of remediation and post-harvest sampling after remediation provides the additional flexibility requested by commenters that expressed the need for farmers to have greater opportunity of success entering the hemp production industry.

#### Reverse Distributors

The IFR requires the collection and destruction of noncompliant material by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer or their designee.

*Comments:* Comments largely opposed the use of DEA-registered reverse distributors to dispose of noncompliant material. Comments asserted that many States and producers operating under the 2014 Farm Bill have implemented policies related to disposal of non-compliant material that do not require DEA involvement. Comments argued there are relatively few registered reverse distributors on DEA's 2019 list and pointed out that some of the major hemp production States have very few or no registered reverse distributors. Comments claimed existing DEA-registered reverse distributors haven't the resources or training to oversee destruction of large plots of agricultural crops in remote areas, and that such limitations would create a compliance bottleneck. Comments asked USDA to clarify who would be responsible for paying DEA reverse distributors for crop disposal services.

One comment asserted that DEA regulations prohibit reverse distributors from accepting controlled substances from other than DEA registrants, making it impossible for hemp farmers to release non-compliant hemp directly to DEA reverse distributors. One comment suggested that hemp growers could automatically become reverse

distributors if their hemp samples test above acceptable THC levels so growers could legally manage crop destruction on their own. Another comment asked whether DEA would allow for a waiver from the current limitation on reverse distributors to allow reverse distributors to accept cannabis material for disposal from individuals or entities who cultivate hemp in accordance with their state's approved plan, but who do not hold a Schedule I DEA registration.

Numerous other comments expressed concern that alternative law enforcement agencies (non-DEA) will face the same resource constraints as the DEA. Comments described how State law enforcement officials are typically unwilling or unavailable to participate in the disposal of noncompliant crops and suggested this is due to the lower prioritization of hemp compliance oversight in light of more pressing public safety and crime intervention responsibilities. For example, a comment representing rural counties said this conflict in priorities is particularly acute in rural areas where resources are already stretched too thin. The comment asserted that while preventing serious violations of controlled substances laws is a priority for law enforcement agencies, hemp with slightly elevated THC levels is unlikely to be sold as marijuana. The comment advocated formulating hemp disposal procedures entirely outside the scope of law enforcement. One comment worried about the stress and stigma on growers having law enforcement personnel descend upon their farms in connection with hemp disposals. Other comments supported allowing State regulatory authorities to oversee or authorize disposal of non-compliant material, asserting that States can safely and efficiently complete the process at a much lower cost to producers and States.

Some comments supported disposal of non-compliant material by law enforcement. Some suggested that States, rather than Federal agencies, work with State and local law enforcement to handle disposals. One comment suggested that the definition of "duly authorized Federal, State, or local law enforcement officer" be modified to include disposal under the authority of State or local law enforcement in order to address the anticipated increase in required disposals. Finally, comments from Indian Tribes urged USDA to expand the definition of law enforcement in the final rule to include Tribal law enforcement.

*AMS response:* AMS acknowledges the many stakeholders who expressed

through comment concerns about the collection of non-compliant plants by DEA-registered reverse distributors, or duly authorized Federal, State, or local law enforcement. AMS notes that law enforcement policies and priorities are not set by USDA and the 2018 Farm Bill does not provide this authority. To address public comment, this final rule will retain disposal requirements stated in the IFR but will further clarify what "disposal" means relative to the role of reverse distributors.

AMS relaxed the disposal requirements enacted under the IFR in February 2020. This decision followed consultation with DEA. This provided growers the added flexibility to conduct on-farm disposal activities themselves, without required onsite law-enforcement supervision. Based on positive feedback received from State and Tribal oversight agencies and producers following the relaxation of disposal requirements, AMS is permanently allowing for on-farm disposal flexibility in the final rule.

Under this final rule producers do not need to use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants (7 CFR 990.3(a)(3)(iii)(E) and 990.27) if the producer disposes of the plants using one or more of the means described by USDA at <https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities>. It is the agency's intent that these methods allow producers to apply common on-farm practices as a means of disposal while rendering the controlled substance non-retrievable or non-ingestible. Producers must document the disposal of all non-compliant plants in accordance with § 990.27. Reporting can be accomplished by providing USDA with a completed: "USDA Hemp Plan Producer Disposal Form."

Cannabis with a THC level of over 0.3 percent on a dry weight basis is a controlled substance, that must be disposed of onsite according to the disposal methods approved by USDA. The State, Indian Tribe or the state's department of agriculture wishing to have primary regulatory responsibility have the responsibility for establishing protocols and procedures to ensure non-compliant plants are appropriately disposed of in compliance with applicable State, Tribal, and Federal law. States and Indian Tribes operating under approved hemp production plans must notify USDA of any occurrence of non-conforming plants or plant material and provide the disposal record of those plants and materials monthly. There is a similar requirement for producers operating under the USDA plan. Additionally, USDA will conduct

random audits of licensees to verify hemp is being produced in accordance with the provisions of the rule.

State and Tribal plans must still include procedures to verify disposal but would have the additional flexibility to use in-person verification where deemed necessary or, when practicable, require producers provide pictures, videos, or other proof of disposal. AMS believes this decision will further alleviate the strain to oversight resources and allow State and Tribal authorities to more efficiently and autonomously monitor hemp production in their jurisdictions.

Additionally, the final rule expands the definition of “law enforcement” to include Tribal law enforcement.

### Negligent Violation Threshold

The IFR specified that a producer commits a negligent violation when a reasonable effort to grow hemp is made and the total THC dry weight concentration exceeds 0.5 percent.

*Supporting an increase of negligent violation threshold:* Most comments that addressed negligent violations opposed the 0.5 percent total THC threshold in the IFR, and many advocated raising the threshold to 1.0 percent or higher, offering suggestions ranging between 0.99 and 5.0 percent total THC. Comments said the 0.5 percent threshold can be too easily breached by prudent farmers for any number of environmental or genetic factors that are beyond grower control. One comment supported the 0.5 percent negligence threshold, and others noted it but signaled neither support for nor opposition to the threshold particularly.

Some comments suggested that a 1.0 percent threshold would provide a safe environment in which both new and veteran farmers can operate comfortably. Comments in favor of a 1.0 percent negligence threshold noted that several States and other countries have established a 1.0 percent threshold for their jurisdictions that seems reasonable and achievable in most situations. A few comments pointed out that a 1.0 percent threshold is relatively low compared to the THC levels in marijuana, which commenters said typically range from 10 to 15 percent. Other comments advocated higher thresholds that they claim would give farmers the peace of mind to continue building an industry that is just taking off. Finally, one comment asked whether an MU was figured into the IFR’s negligent violation threshold and advocated setting the threshold at 1.5 percent THC and specifying that that threshold includes the MU.

A state department of agriculture estimates that 42 licenses would need to be revoked at 0.5 percent stated in the IFR. They further estimate that this number would shrink to only about 12 licenses were the threshold increased to 1.0 percent under the final rule.

A state hemp steering committee commented that a 0.5 percent threshold will deter the experimentation of different varieties and that this research is essential to discovering which varieties work best in different climate zones and soil types as well as for the development of better genetics.

Another state department of agriculture explained that 13 percent of the hemp samples taken in 2019 tested over the THC limit. The average THC level in those failures was 1.07 percent Delta-9 THC post-decarboxylation. A hemp association within the state agreed with the commenter’s recommendation that the level defined for negligence should be increased to 1 percent THC.

One comment reported that more than 5.5 percent of the pre-harvest samples collected under the State’s plan in 2019 were found to have a THC concentration of greater than 0.5 percent. Another comment reported that 13 percent of hemp samples taken in 2019 tested over the THC limit. According to the comment, data for all years through September 2020 show that most hemp lot failures occur between 0.4 percent and 1.0 percent THC.

Data submitted with a comment from a State University researcher showed that 8.5 percent of 3,508 samples tested during 2018–2020 exceeded the IFR’s negligent violation threshold of 0.5 percent THC. The comment said that 65 percent of those would not be considered negligent violations if the threshold were raised to 1.0 percent. Framing study results another way, the comment explained that at a negligence threshold of 0.5 percent, the State would have revoked 42 producer licenses, whereas at a 1.0 percent threshold, the State would have revoked only 12 licenses, given three negligent violations in a five-year period, a reduction of 72 percent in revocations by changing the threshold to 1.0 percent.

One comment reported that based on test results they’d seen this year, 1.0 or 1.5 percent would be a more appropriate threshold for negligence, due to the heterogeneity of the plant and the awareness of the industry.

*Implementation timeframe:* Some comments suggested that it is too early in the industry’s development to determine a realistic numeric threshold, and they recommended USDA delay

fixing a uniform standard until the industry has more experience and better understanding of the relationship between all the hemp production factors. Still other comments asserted that negligence should not be determined numerically at all, but by a determination about the farmer’s intent. Several comments said that “negligence is a state of mind, not a number.”

*General comments on 0.5 percent threshold:* Several comments argued USDA arbitrarily determined the 0.5 percent negligence threshold. One comment asked USDA to provide the research reports used to inform the selection of the 0.5 percent negligence threshold. Another questioned whether USDA used test results based on the total THC standard established in the IFR to set the negligence threshold, since it was the commenter’s experience that producers routinely report difficulty meeting that standard. One comment reported anecdotally that its farm sends three samples from the same composite lot sample to three testing laboratories and gets three different results, which the comment ascribes to the variation in lab procedures. Another comment said that there are no established uniform standards for cannabinoid testing, such that even from reputable labs it will not be entirely clear what the results mean.

*The impact of the 0.5 percent threshold on production:* Several comments said the 0.5 percent negligence threshold in the IFR provided very little buffer (at 0.2 percent) between the 0.3 percent THC allowed under the program and the 0.5 percent threshold for determining a negligible violation. What several comments called a “safe harbor” for growers was nevertheless considered too narrow by many, saying that it left virtually no room for error. Comments argued that requiring growers to both exercise reasonable care *and* produce crops with only 0.5 percent THC or less is too stringent a standard and does not really offer the “safe harbor” intended. One comment argued that USDA cannot provide a “safe harbor” for violations of the 0.3 percent THC cap because that cap is enforced by other Federal and State agencies. A few comments said that the THC levels in 2014 DEA confiscations averaged 11.84 percent THC and argued that the negligence level under USDA hemp program rules should be closer to the average DEA culpability level.

A comment from a state department of agriculture used 2019 production and testing data to demonstrate that raising the IFR’s threshold from 0.5 percent to 1.0 percent could theoretically reduce

the number of its farmers exceeding the negligent violation threshold by more than 75 percent. Several comments advocated a 2.0 percent threshold, while others suggested the elimination of the negligence threshold altogether.

Comments highlighted uncertainty in the genetic variation of hemp varieties and other factors like weather conditions, soil type, plant disease, and pest pressures that may further exacerbate the risk of exceeding the 0.5 percent threshold. As well, comments explained that hemp plants mature rapidly just before harvest. One commenter described seeing plants go from 0.18 to 0.62 percent total THC in one week. Comments suggested that enforcing the 0.5 percent negligence threshold on growers who truly do not intend to grow marijuana is excessive penalization when THC levels can change that rapidly. Comments argued that it is not appropriate to add further penalties to hot crop destruction. Other comments suggested that administrative and logistical factors beyond the grower's control, such as bottlenecks in sampling and testing, can likewise create compliance risks for growers under the 0.5 percent threshold.

*AMS response:* Based on these comments, AMS is increasing the negligent violation to a 1.0 percent threshold. AMS acknowledges that a lower total THC threshold will result in a higher number of negligent violations. AMS also understands that factors beyond the control of farmers may cause an increase in total THC-levels, such as seed genetic, weather and climate, and may contribute to crops exceeding the negligent violation threshold. AMS believes that the data provided in the comments clearly showed that increasing the negligent violation threshold to 1.0 percent would diminish the risk that producers would incur negligent violations without adding a greater risk of non-compliant material reaching channels of commerce.

AMS also reviewed the test results of certified hemp varieties planted in Kentucky in 2017 and 2018 under its 2014 Farm Bill program. Kentucky has a certified seed program that it believes will yield hemp. The plants from the certified varieties tested below 0.8 percent THC concentration level. Additionally, AMS reviewed the test results of varieties that were eligible to be cultivated under the Nevada 2014 Farm Bill program in 2018. The plants from those varieties tested below 0.9 percent THC concentration level. Given those test results based on varieties that those two states believed would yield hemp, AMS determined that a 1 percent THC concentration level for negligence

would account for the fact that a reasonable reliance on certified or eligible varieties may still yield a plant that tests above the acceptable hemp THC level.

*The impact of the 0.5 percent threshold on crop research:* Comments described the IFR's 0.5 percent negligent violation threshold as a rate limiting factor to industry innovation and hemp research. One comment said that hemp farmers, growing under pilot authorization of the 2014 Farm Bill, routinely planted multiple varieties of hemp to see which performed best. According to the comment, the low negligence threshold in the IFR discourages such hemp trialing and innovation because farmers face greater risk of receiving three negligent violations in one or two seasons and losing eligibility to grow hemp for another five years. Comments from research universities found the IFR's negligent violation provisions unworkable for institutions testing numerous varieties and production variables each season for the same reason. Comments suggested a higher threshold for negligent violation would give industry the regulatory flexibility to conduct research with reduced risk of violating regulatory requirements.

*AMS response:* AMS recognizes the violation threshold may incentivize (or disincentivize) innovation by research institutions and producers. AMS acknowledges more innovation and research across industry will bring more stability to stakeholders. The 1.0 percent negligent violation threshold provides new and existing producers across States and Indian Tribes additional flexibility to innovate and research with reduced risk for noncompliance. AMS believes the 1.0 percent threshold incentivizes innovation across industry more so than a 0.5 percent violation threshold.

*Statutory implications:* Some comments argued that establishment of the 0.5 percent negligence threshold in the IFR was arbitrary and capricious under the APA and asked USDA to provide more information about how the threshold for negligence was determined. Some comments asserted that *negligence* is a well-established legal doctrine, and they argued that USDA cannot artificially and arbitrarily declare a threshold for negligence. A couple of comments suggested that putting farmers on probation, suspending them from program participation, and requiring them to destroy their crops based on an arbitrary number rather than on court findings is a violation of due process under the U.S. Constitution's Fifth Amendment.

*AMS response:* Congress established the definition of hemp and defined the threshold of THC concentration at 0.3 percent dry weight. The statute did not define negligent violation. USDA derived the definition of negligence from the definition of negligence in Black's Law Dictionary (10th ed. 2014). USDA set the level of total THC concentration at 0.5 percent for a negligent violation to establish a clear buffer so that any crop testing out of compliance would not automatically trigger a violation. The 0.5 percent was based on data from three states participating in the 2014 Farm Bill pilot program. AMS believes raising the negligent violation threshold from 0.5 percent to 1.0 percent in the final rule provides a greater buffer and reduces farmers' exposure to risk of violation accrual and license suspension.

*Oversight Authority:* Several comments suggested the government should have the ability to determine negligence and culpability based on facts and circumstances surrounding violations and not solely on a numeric threshold. Other comments asserted that the 2018 Farm Bill's language leaves room for an Indian Tribe to apply its own negligence standard. Similarly, other comments from the industry said that States should be allowed to evaluate potentially negligent violations of State plans.

*AMS response:* With regard to violations and culpability determination, AMS seeks to establish a regulatory framework that ensures consistency in oversight activities of hemp production. Variations of criteria or the use of subjectivity in oversight could result in bias against or leniency to some hemp farmers simply based on location. Leaving the decision of what constitutes a negligent violation to abstract factors rather than objective metrics may result in differences between States and Indian Tribes. Because farmers may grow hemp in different locations, and in some cases are subject to multiple oversight authorities, it is important the thresholds for violations are consistent across oversight authority jurisdictions to which the grower is responsible. Having a threshold that is well established and transparent provides a minimum framework to producers.

In developing the compliance requirements for State and Tribal plans, USDA recognizes that there may be significant differences across States and Indian Tribes in how they will administer their respective hemp programs. Accordingly, if, at a minimum, the requirements of the 2018 Farm Bill and applicable parts of this

regulation are met, States and Indian Tribes are free to determine whether or not a licensee under their applicable plan has taken reasonable steps to comply with plan requirements. As previously stated, this final rule provides that a producer shall not be subject to more than one negligent violation per calendar year. State and Tribal plans may tailor the timing around this requirement to align with their growing season or other applicable dates.

*Financial and business risk:* Several comments linked the 0.5 percent THC threshold with a greater likelihood of producers committing negligent violations, receiving corrective action plans, and even committing culpable negligent violations. Comments stressed that a low negligence threshold puts farmers at higher risk of accumulating negligent violations, even when growers take reasonably prudent steps to mitigate against the production of noncompliant plants. According to comments, this, in addition to the loss of the crop, jeopardizes farmers' access to crop insurance and business loans.

Comments addressed the negative impact of the accrual of negligent violations on the financial stability of the individual business. They described how a hemp grower's access to credit and insurance is jeopardized when negligent violations accumulate and lead to a determination of culpable negligence. Comments explained that lending institutions and insurance providers look for risk factors. They also raised questions about how the accrual of negligent violations may be interpreted by lender or provider. Comments said that many insurers will not cover crop losses if losses are due to the growers' negligence. Commenters implored USDA to explain how violations can lead to determinations of culpable negligence and to provide guidance about how a reasonable farmer can avoid growing noncompliant hemp.

*AMS response:* AMS acknowledges institutional lenders view violations as risk factors in decision making. AMS also notes that not all culpable violations are derived from the accrual of negligent violations. Culpable violations may be the result of producers violating other parts of the 2018 Farm Bill. However, the 2018 Farm Bill explicitly considers certain actions as constituting negligent violations. AMS's intention is to provide a threshold between 0.3 percent THC level and what would be considered a negligent violation so not all hemp that tests over the 0.3 percent be considered a negligent violation. Because a producer will not have committed a

negligent violation every time he or she grows hemp with a concentration of hemp above the 0.3 percent level, this will assist producers when requesting loans or other financial assistance. AMS will provide risk mitigation activities such as remediation and disposal provisions as well as increasing the negligent violation threshold to 1.0 percent to diminish the number of violations that are considered negligent.

Some producers have more than one field or farm in a state or across state boundaries. Assigning more than one negligent violation might be detrimental to these producers. For example, if a producer uses the same seed in multiple locations, and that seed results in a THC level over 0.3 percent, all of that production must be disposed or remediated. All of these locations could be determined a separate violation. However, AMS wants to clarify that a producer may not be found to have committed more than one negligent violation per year.

*Barriers to entry:* Several comments suggested that a 0.5 percent negligence threshold threatens the survival of farmers in an emerging industry. Comments suggested that the low threshold is a barrier to entry for new farmers or farmers with no experience growing hemp, who risk high initial capital investments to establish operations. Comments argued that the low threshold favors larger farms using industrialized hemp varieties and production practices, and that the low negligence threshold in the IFR would unnecessarily criminalize farmers working with a legal agricultural commodity.

*AMS response:* All persons interested in growing hemp must meet the eligibility criteria established in the 2018 Farm Bill and this final rule. Negligent violations document instances when the statute or rule are violated such as when a grower fails to report a legal description of land on which hemp is grown or fails to dispose of a noncompliant crop. All farmers, regardless of the size of their operations, face the same set of requirements. Even though the 2018 Farm Bill sets the THC concentration level at 0.3 percent, it does not define what THC level in cannabis will give rise to a negligent violation. Left undefined, this lack of definition is troublesome as it could make enforcement uneven among States and Indian Tribes. The IFR provided that hemp producers do not commit a negligent violation if they make reasonable efforts to grow hemp and the marijuana does not have a THC concentration of more than 0.5 percent. Increasing this threshold to 1.0 percent

benefits producers, including small and new farmers, that intended to grow hemp but whose crops tested "hot" even though they made reasonable efforts to grow hemp.

*Resources and enforcement:* One State commented that it currently enforces a 1.0 percent negligence threshold. According to the comment, lowering the threshold to 0.5 percent would significantly increase the rate of negligent violations in that State, require more State and Federal resources to enforce the regulation, and be financially burdensome to novice farmers. It stated that the 0.5 percent negligence threshold is lower than the threshold DEA designates as the upper THC limit for "inconclusive marijuana/hemp." The comment found the IFR's 0.5 percent threshold inconsistent with some laboratories' testing capabilities and suggests raising the rule's threshold to 1.0 percent.

*AMS response:* AMS anticipates that the closer the negligent violation threshold is to 0.3 percent total THC, the greater the likelihood that oversight authorities issue more negligent violations. Moreover, whenever a producer commits a negligent violation, the oversight authorities must also establish a corrective action plan as required by regulation. AMS believes that increasing the negligent violation threshold to 1.0 percent would therefore reduce some burden to oversight authorities by reducing the number of negligent violations and corrective action plans that oversight authorities must issue and administer. AMS notes that regardless of the negligent violation threshold, any crop exceeding the Federal allowable total THC concentration must be disposed of according to regulatory requirements. AMS disagrees that the DEA's enforcement program for marijuana should affect how AMS manages its compliance program for hemp.

#### State and Tribal Resources

The IFR required States and Tribal governments to certify they have the resources and personnel to carry out the practices and procedures of their respective plans. Further, the IFR provided for audits of State and Tribal plans to include review of the resources and personnel employed to administer and oversee its approved plan. Finally, the IFR specified audit reporting requirements and remediation steps for States and Tribal governments found to be non-compliant with USDA requirements.

*Comments:* Comments from many States expressed enthusiasm for partnering with USDA in the regulation

of domestic hemp production. The comments were supportive of establishing a national regulatory framework that would bring clarity and consistency to the regulation of hemp production across the U.S. They emphasized that many States have enacted legislation to facilitate the regulation of hemp production. No comments received from the States demonstrated a reluctance to work with USDA in establishing regulations.

The requirement for States and Indian Tribes to certify to USDA that they have the capacity to administer a domestic hemp program was not addressed explicitly in any of States' comments. However, many of the comments from the States and Indian Tribes registered concerns with some aspects of the IFR. Most of the comments from States and Indian Tribes delineated areas where the burden of regulatory oversight might be reduced, or efficiencies realized, by revisions to the regulations.

Several comments expressed concern that State and Tribal governments would not be able to perform their responsibilities under the program as currently established. One comment said the lack of appropriate personnel, training, and protocol would lead to an untenable backlog in the collection and testing of samples. Many comments focused on the sheer number of samples that must be collected, processed, and tested under the program. The shortage of DEA-registered labs in the States and the new sample collection protocols were also areas of concern, although that was addressed shortly after the IFR went into effect with the announcement of enforcement discretion.<sup>27</sup> Points of potential weakness in the States' and Tribal governments' implementation of the IFR were raised by many commenters, both explicitly and in implied remarks. Many of the comments referenced State and Tribal government infrastructures being strained under the new regulatory requirements, especially during peak harvest intervals, and that those factors could contribute to the failure of the States and Indian Tribes to fulfill their oversight obligations. A number of comments alluded to the burden of any breakdown in the regulatory scheme being borne by hemp producers directly, as with samples that are not timely collected by State inspectors and the samples then testing "hot" without any remediation options, or labs that are not able to process samples due to capacity issues.

Numerous comments made recommendations to address the

increased regulatory burden on States and Tribal governments. Many recommended changing the 15-day post-harvest period to 30 days to allow more time for States and Tribal governments to collect and process samples, balance workloads, and alleviate potential backlogs. In addition, several comments contended that the increased sampling requirements in the proposal (*i.e.* requiring sampling of every lot) would burden the process and contribute to delays in growers receiving results. Those comments recommended revising the sampling protocol (reducing number of samples required per producer) to help relieve the strain on government resources. Lastly, comments suggested that allowing labs that are ISO 17025 accredited to process samples, as opposed to only allowing labs with DEA registration, would enhance the State's ability to provide validated, accurate, and timely testing.

One commenter said they had talked with a number of States that expressed strong concerns over the additional burdens as a result of the IFR. The commenter further stated that some states they are considering whether to "opt-out" of administering a hemp production plan themselves in favor of USDA administering a plan.

Lastly, one comment stated that if there was a bureaucratic slow down or insufficient resources on the part of USDA, a farm should be allowed to have some recourse to be able to harvest. That comment, and others that were similar in spirit, effectively questioned what mitigation efforts would be undertaken for producers in the short run if a State or Indian Tribe ultimately lacks the necessary resources and personnel to administer its plan and fails to perform the obligations it certified it could undertake.

**AMS Response:** The issues raised in these comments are mostly addressed under other sections in this rule (*e.g.*, 15-day harvest window, laboratory accreditation). AMS agrees that there are regulatory burdens of this program, which are discussed in this rule. States and Indian Tribes have multiple options that would allow producers in their States or territories to grow hemp. States and Indian Tribes can develop their own plan, send their producers to grow under the USDA plan, or States can continue under the 2014 Farm Bill pilot program. Many States and Indian Tribes assess fees on producers to cover their expenses for sampling, oversight and other costs of this program. These options provide producers different alternatives to grow hemp under different regulatory schemes.

Additionally, USDA has decreased the risk of the regulatory burden on States and Indian Tribes being borne by hemp producers by addressing various issues commenters identified that could cause States and Indian Tribes to be unable to timely fulfill their responsibilities such as by modifying the sampling protocol and changing the 15-day post-sample harvest period to 30 days. Other burdens associated with this final rule that the producer must cover should be considered by producers, as in any agricultural business, before a decision to grow hemp is made.

#### **Appeals—Denial of Application and Appeal of Test Results**

The IFR addressed the denial of applications to grow hemp in Part V. APPEALS. The IFR also provided an option to appeal test results in which producers can request that a second test be performed if they disagree with the first test results.

**Comments:** A comment recommended that USDA establish a clear deadline for applicants who wish to appeal the denial of their grower applications. The comment noted that the IFR already required a State or Indian Tribe appealing the suspension or revocation of a hemp production plan to file an appeal "within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later." The commenter noted that no such similar deadline is identified for applicants who have been denied USDA hemp grower licenses.

One comment asserted that denials of "licensure" may occur for "whatever reason." Two other commenters submitted examples of State regulatory language from California and Ohio, each of which include provisions for the denial of applications for license.

Several comments suggested USDA establish an appeals process through which someone with a felony conviction may demonstrate completion of appropriate steps to become eligible hemp producers.

**AMS response:** This rule retains the IFR provision that an applicant for a USDA hemp production program license may appeal a license denial to the AMS Administrator. USDA licensees may appeal denials of a license, renewals, license suspensions, or license revocations to the AMS Administrator must be submitted in writing and received within 30 days of the receipt of notification of the denial or within the time-period provided in the letter of notification, whichever occurs later. State and Tribal plans reviewed and approved by USDA are

<sup>27</sup> <https://www.ams.usda.gov/rules-regulations/hemp/enforcement>.

required to include an appeal process for producers to appeal licensure decisions. In response to the comment that USDA should establish an appeals process through which someone with a relevant felony conviction may demonstrate completion of appropriate steps to become eligible hemp producers, it is important to note that limitations as a result of relevant felonies are set in the 2018 Farm Bill.

#### Appeals—Technical

The IFR stated that producers can request a second test be performed if they disagree or have doubts about the original test results.

*Comments:* One comment indicated that if there is a discrepancy between compliance testing for THC concentration, there needs to be a process for farmers to appeal. Another comment noted that no administrative appeal process exists for producers who wish to challenge a decision they believe adversely affects them, such as test result. Another commenter cited personal experience with one State agriculture department and described as “unfair” a regulatory system that does not allow for an appeal process through which a farmer may contest test results.

*AMS response:* USDA is maintaining its position that producers *under a USDA plan* are able to request a second test be conducted when they do not agree or have questions about a test result. This rule provides flexibility to allow States and Indian Tribes to provide for retesting if the State or Indian Tribe chooses to do so.

#### Transportation and Shipping Documents

Under the 2018 Farm Bill and the IFR, neither States nor Indian Tribes may interfere with the transportation of lawfully produced hemp through States or Tribal territories, even if hemp production is prohibited within a particular State or Tribal territory. Public comments related to transporting hemp focused primarily on facilitating the interstate transportation of hemp.

*Interstate commerce:* Many comments applauded the IFR’s reiteration of the statutory provision that allows for interstate shipments of lawfully produced hemp and hemp products without interference by State or Tribal law enforcement. Some asked USDA to clarify that prohibited interference includes that from State, Tribal, or Federal law enforcement, including DEA. Other comments wanted confirmation that interstate commerce includes entry into and egress from Tribal territories and that Tribal hemp production licenses be honored for

purposes of interstate commerce transport and commerce.

Commenters stated they had already encountered situations where States passed temporary regulations conflicting with the 2018 Farm Bill and impeding interstate commerce. For example, comments noted an Idaho Executive Order—Transportation of Hemp—issued in 2019, that they claimed would “excessively frustrate interstate hemp transportation and growth of the hemp industry.” One airline carrier comment explained that under this Order, “transporters may have to stop, get inspected, and be subject to detention each time they cross jurisdictional boundaries” and that airlines would avoid carrying hemp if this issue is not remedied.

Comments from Indian Tribes expressed concern that despite the 2018 Farm Bill, Tribes transporting hemp through States have a bias against Tribal hemp production. There were suggestions of the use of a USDA form or stamp authorizing transportation to address these obstacles. One commenter also requested that USDA provide for recourse for Indian Tribes that are prohibited from moving hemp through neighboring States.

*AMS Response:* At this time, USDA recommends that transporters carry a copy of the producer’s license or authorization, as well as any other information the governing State or Indian Tribe recommends or requires that will validate that the transporter is transporting legally-grown hemp. As allowed under the 2018 Farm Bill, States and Indian Tribes can be more restrictive, which includes possible transportation paperwork requirements by States or Indian Tribes. USDA is not adding transportation paperwork requirements to this rule because it does not have jurisdiction over common carriers or other types of transporters.

*Comment:* A comment asserted that intrastate commerce of hemp that does not meet all the requirements of the IFR should remain under the State’s authority, and farmers producing hemp compliant with the 2018 Farm Bill but not the IFR should be allowed to do so, as long as that hemp is not transported across State lines. The comment advocated for no Federal preemption, citing to section 297B(a) of the 2018 Farm Bill, which provides that “nothing in this subsection preempts or limits any law of a State or Indian Tribe that (i) regulates the production of hemp; and (ii) is more stringent than this subtitle.”

*AMS Response:* The 2018 Farm Bill does not preempt State law provided that the State adopts a plan that is

approved by USDA and the plan may provide for more stringent requirements. A State has the responsibility for enforcing the requirements of its plan. Thus, hemp that is produced under a State’s plan should meet the requirements of the final rule.

*Shipping Documentation:* Several comments encouraged USDA to facilitate the unimpeded flow of hemp in interstate commerce by implementing identity preservation or tracking systems or requiring the use of standardized shipping labels, packaging, or other documentation to certify to stakeholders and law enforcement authorities that the cargo in transport is Federally legal hemp. Comments suggested the use of USDA-issued stamps or forms that are recognizable, understood, and accepted by all law enforcement authorities. Several Indian Tribes made this suggestion because they are concerned about law enforcement transportation issues, particularly in Idaho, South Dakota, Maine, New York and Wisconsin. According to comments, such forms could verify that cargo hemp is compliant with USDA-approved production plans. Other comments suggested the use of a standardized bill of lading across the industry that sets out essential information about the shipment for easy reference by transporters, regulators, processors, and law enforcement officials to ensure all loads have been lawfully produced in accordance with Federal, State, or Tribal law. A comment from an association of county agriculture commissioners and sealers suggested USDA require the officially certified lab report to accompany shipments of hemp product during interstate shipment.

Comments suggested various commercial systems for recognizing legally produced hemp in transport. Other comments asked USDA to devise a standard documentation system for hemp carriers that would more easily absolve them of legal liability related to transporting hemp. Comments recommended that USDA coordinate with the hemp industry; Federal agencies such as DEA, the Department of Transportation, and the Department of Justice; and State agencies, including law enforcement and transportation departments, to develop such documentation.

Some comments additionally recommended adopting specific hemp packaging and labeling requirements on the basis that they would support compliance and enforcement tasks. Some comments advised USDA to provide specific regulations for testing hemp in transit so that such testing, if

necessary, be conducted in a standard manner, consistent with the requirement that all pre-harvest Total THC testing be conducted by DEA-registered laboratories. Other comments recommended that hemp loads be sealed to ensure their integrity and mitigate the interference of illicit products.

Comments advocated that USDA host a central hemp database for reporting data applicable to all phases of hemp production that would be “read only” to law enforcement, saying such a system would be particularly beneficial in resolving questions related to interstate commerce. One comment advocated for the use of a centralized hemp clearinghouse to capture hemp flower transfer to processors or manufacturers for CBD extraction, including information on the licensed producers and receivers of raw materials, the total weight of materials being transferred, testing certificates indicating THC levels of the materials being transferred, and other State-mandated criteria, as well as information on the vehicles being used to transport the materials. It further recommended USDA evaluate methods to physically identify and segregate products containing hemp-derived CBD to differentiate legitimate from potentially illicit products.

*AMS response:* AMS understands the importance of ensuring safe passage of hemp across states and Tribal jurisdictions. Section 10114 of the 2018 Farm Bill specifically states that “Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp.” USDA issued a memorandum addressing this issue.<sup>28</sup> Several States already identified documents to facilitate transportation of hemp across states. AMS strongly encourages producers of hemp and carriers providing transportation services to provide the following documentation accompanying the hemp cargo: Copies of the laboratory testing report(s), hemp grower license, invoice/bill of lading, and contact information of buyer and seller. The 2018 Farm Bill does not provide specific authority to USDA to This final rule does not adopt any requirement for interstate transportation of hemp. As required by the 2018 Farm Bill, USDA is developing a database that will share information about hemp production with law enforcement. The database will identify the contact information for the producer, a legal description of the land

on which hemp is produced, and status of the producer’s license or other required authorization from the State or Indian Tribe.

#### “In-Process” Material

*Comments:* Several comments mentioned “in-process material,” described as material made from otherwise qualifying hemp plant material, such as crude CBD oil and distillate, or as any hemp material that is compounded, blended, ground, extracted, sifted, sterilized, derived by chemical reaction, or processed in any way for use in the manufacture of hemp products. Commenters asked USDA to clarify that once hemp has been tested and allowed to enter commerce, it should be considered legal material thereafter. One comment suggested the establishment of specifications or guidance for any part in the “in-process material” manufacturing record where control is necessary to help ensure that specifications are met for the identity, purity, strength, and composition of the hemp products and, as necessary, for limits on those types of contamination that may adulterate or may lead to adulteration of the finished batch of the hemp product.

One comment explained the perception that in-process materials are not allowed to transfer freely between processors, causing bottlenecks in product processing. According to the comment, some hemp processors may be limited to performing only one step of a multi-step process to derive hemp products, such as distilling CBD oil and isolating the CBD molecule. It said processor-to-processor transfers of in-process hemp materials should be authorized between U.S. States with valid hemp programs, which would open a processing bottleneck and allow both hemp materials and cash to flow more freely. The comment asserted such authorization would improve prices for CBD end-products, which would trickle down to hemp growers.

Some commenters stated that it is commonly known that THC levels in initially compliant hemp may rise above the 0.3 percent delta-9 THC limit during subsequent processing. Commenters expressed concern that some jurisdictions believe the “in-process material” should be diluted to always maintain the level below 0.3 percent delta-9 THC, even during transportation to another processor. However, several comments argued that “in-process material” is neither consumer ready nor a “finished” product and that dry-weight measurements related to hemp THC levels are calculated on the initial plant material and not the finished

product to ensure compliance with the threshold.

*AMS response:* The 2018 Farm Bill directed USDA to establish a national regulatory framework for hemp production in the U.S., and the final rule outlines provisions for this mandate. The IFR and this final rule do not cover hemp or its products beyond production. Further, DEA has issued regulations covering some of these products or “in-process materials”.<sup>29</sup> Accordingly, this final rule does not address “in-process materials,” processors, end-products, processing of CBD or other cannabinoids or anything that may contain hemp or hemp byproducts.

#### Equal Treatment for Tribes

*Comments:* Some commenters said that final rule should provide Indian Tribes at least as many opportunities regarding hemp production and regulation as those granted to States and that the final rule should allow Indian Tribes to catch up quickly with States that have been allowed to develop production methods and markets under the 2014 Farm Bill provisions.

*AMS Response:* This final rule does not distinguish between States and Indian Tribes. USDA recognizes that both State and Tribal governments have the ability to authorize and to regulate the production of hemp within their States or territories consistent with the 2018 Farm Bill and the final rule.

#### Psychoactive Effects of Cannabinoids

Delta 9 THC or THC is the primary psychoactive component of cannabis. As mandated by the 2018 Farm Bill, hemp must be verified as having THC concentration levels of 0.3 percent or below on a dry weight basis.

*Comments:* Several comments referenced different studies to support conflicting positions regarding the psychoactive effects of THC and used study findings to argue that the IFR’s THC limit should be revised. Many comments cited the “Defining Hemp: A Fact Sheet” from the Congressional Research Service, updated March 22, 2019, that said a level of about 1 percent THC is considered the threshold for cannabis to have a psychotropic effect or an intoxicating potential. Other commenters argued THC levels of 5 percent or more are necessary for marijuana to have a psychoactive impact or commercial value. Comments noted that hemp is generally characterized as plants that are low in delta-9 THC and high in levels of CBD,

<sup>28</sup> Memorandum from Stephen Vaden, Office of General Counsel to Sonny Perdue, Secretary of Agriculture, Legal Opinion on Certain Provisions of the Agriculture Improvement Act of 2018 Relating to Hemp (May 29, 2019).

<sup>29</sup> <https://www.govinfo.gov/content/pkg/FR-2020-08-21/pdf/2020-17356.pdf>.

the primary non-psychoactive compound. Many comments stated that research shows that CBD affects the ability of THC to bind to CB1 receptor in cells, thus blocking the psychoactive effects of THC.

Other comments representing health organizations stated that research is challenging the widely accepted premise that CBD is not intoxicating. They further stated that the THC found in CBD products can be intoxicating and has caused significant and serious consequences in terms of job loss, health, and exposure to pediatric populations. Some comments provided personal testimony that while using CBD for health benefits they had not experienced psychoactive or intoxicating effects.

Other comments reported that the United Nations standard STR/NAR/40 uses a ratio of  $([THC] + [CBN])/[CBD]$  to determine whether a plant is likely to have a psychoactive effect.

*AMS response:* AMS appreciates understanding different views on the psychoactive effects of THC. However, this topic is outside the scope of the final rule, and AMS made no revisions to the program based on these comments. The 2018 Farm Bill defined hemp as having a THC concentration of 0.3 percent or less. Medicinal use of hemp or CBD is covered under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ch. 9, sec. 301, *et seq.* and under the FDA's jurisdiction.

#### Miscellaneous Comments

*Comments:* One comment pointed out that the IFR's hemp definition did not include the application of an MU, but that the definition of acceptable hemp THC level does. The comment said references to the definition of hemp should be changed to refer to acceptable hemp THC level so there is uniformity across the final rule.

*AMS Response:* USDA has made references to acceptable hemp levels when appropriate. The acceptable hemp levels include the MU to account for differences in laboratory conditions or environments. There is no intention to change the definition of hemp that is stated by the 2018 Farm Bill.

*Comments:* Another comment recommended improving the clarity of the final rule by deleting the words "or THC" from the definition of delta-9 THC, as well as deleting the sentence "For the purposes of this part, delta-9 THC and THC are interchangeable." The comment further recommended that the definition of Total delta-9 THC be expanded to clarify that it includes delta-9 THC combined with delta-9 THCA to account for the conversion of

delta-9 THCA into delta-9 THC when the plant material is dried. Finally, the comment recommended that in all cases where "THC" is referenced throughout the final rule document with no further clarification, "THC" should be changed to "delta-9 THC." The comment said these clarifications will be helpful in administration of the rule.

*AMS Response:* AMS is adding a definition of "Total THC" to clarify the use of the term in this rule. Total THC accounts for the conversion of THCA into THC. We believe using THC and delta-9 THC interchangeably is appropriate.

*Comment:* One comment claimed that making the IFR effective immediately gave farmers preparing for imminent harvest no time to comply with the new testing and threshold requirements, increasing their risk of producing plants that were legal under the 2014 and 2018 Farm Bill statutes but potentially illegal under the IFR.

*AMS response:* USDA's decision to make the IFR effective immediately was to provide a framework for the 2020 growing season. However, States had the option to continue operating under the 2014 Farm Bill. States and Indian Tribes were provided time to develop plans on time for their planting and harvest season.

*Comment:* USDA should work with other agencies, including DEA and DOJ, to develop cohesive information and guidance regarding enforcement related to hemp.

*AMS response:* AMS has worked with DEA and other agencies in developing these regulations to assure that the intent of the 2018 Farm Bill provisions for hemp are met. USDA is responsible for the regulatory oversight of hemp production and DEA and other law enforcement agencies are responsible for enforcing the law regarding marijuana.

#### Miscellaneous Comments—Out of Scope

In addition to addressing specific provisions of the IFR, comments also addressed other topics related to the hemp industry.

*Comments:* One comment advocated the creation of a USDA commodity checkoff program for one or more categories of hemp (*e.g.* grain, fiber, CBD) and recommended that USDA work with hemp industry trade organizations and stakeholders to administer checkoff funds to support hemp agronomic and market development. Another comment included a newsletter item quoting USDA as saying that such a program could be developed.

One comment asked USDA to support the hemp industry by adding hemp seed foods to those offered through school lunch and other government feeding programs.

One comment said that hemp extracts and concentrates and byproducts from hemp should be afforded the same legal status and protections as the hemp from which they originated.

One comment suggested that the IFR did not consider compliant hemp topical products that make up a large portion of the market or other applications that cannot be inhaled or ingested.

One comment advocated that hemp and CBD should be covered and protected under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*).

Some comments said farmers should only be allowed to sell hemp to licensed brokers, handlers, and processors, and not directly to the public. They further advocated requiring license information to be part of the documentation that accompanies hemp shipments.

A couple of comments urged USDA to establish good manufacturing practices for CBD manufacture.

One comment claimed that chemical and seed providers have developed aggressive tactics which may be used to hamper hemp producers.

One comment requested updating banking regulations to allow banks to do business with entities whose income is derived from hemp and/or legal cannabis. Another comment requested an examination on how bonding could protect hemp farmers against companies and contracts that have not been honored, causing financial harm to the grower.

One commenter suggested to discontinue the program totally or at least discontinue the CBD portion because there is too much potential for abuse and waste of taxpayer dollars. The commenter stated that it could be okay to continue the coverage for the seed and fiber. They also stated that USDA should not be in the marijuana business.

AMS received comments on the impact of the current statutory and regulatory structure on banking and insurance related to hemp production. Commenters expressed concern that the 0.3 percent THC ceiling and the required disposal of cannabis testing above 0.3 percent THC would hinder the ability of hemp producers to obtain insurance, loans, or other financial services. One commenter also urged AMS to clarify if the preemption language in section 10114(a) of the 2018 Farm Bill encompasses interstate banking, financial services, and

insurance transactions and if USDA intends to supersede, coordinate, or adopt guidance issued by other Federal agencies related to hemp production.

A comment suggested banks could offer insurance for crop losses if the hemp had a THC concentration that was greater than 0.3 percent but less than or equal to 0.5 percent, similar to offering coverage for losses due to factors beyond the grower's control, depending on various USDA culpability findings. Another comment advocated that crop insurance be available for hot hemp.

A comment stated that Non-Irrigated (NI) acreage should be uninsurable because good producers who are serious about growing the crop would not bother with NI acreage. Another comment discussed establishment of "Earliest Plant Dates" (EPD), Late Plant Period (LPP), and Final Plant Date (FPD), and references sections of what may be a State or Tribe plan and the difficulty of finding farmers growing hemp in comparable environments for determining such dates and insurance coverage. It also recommended developing a Replant Endorsement (with premium associated) to insure 50 to 75 percent of seed costs for replant. Finally, a commenter stated that germination tests should be required before the crop is planted and set a minimum standard of 85 percent germination—and those under that standard would be uninsurable. Several commenters argued that USDA should (1) ban hemp and hemp related products imported into the United States; (2) establish import limits on the number of clone material; (3) eliminate all imported hemp and concentrates into the U.S. for the next 2 years, except for trades to the Canadian marketplace, but exportation must still be open for our country and product markets outside the United States; and (4) establish clear rules on how imported hemp and hemp products will be regulated.

One commenter expressed concern about the current regulation of CBD as a prescription drug arguing that the prescription-only status for CBD is unwarranted and will facilitate the illegal market that continues to exist for these products. One commenter noted that the regulatory ambiguity resulting from the FDA's lack of guidance on CBD negatively impacts hemp producers and requires greater clarity.

One commenter raised concerns about the ability of farm workers seeing U.S. naturalization to be able to participate in hemp production based on a fear that U.S. Immigration and Customs Enforcement will view work in hemp production as an "exclusionary

activity" that would be a barrier to naturalization.

Several commenters expressed concern regarding hemp production in close proximity to other agricultural crops. Commenters also expressed concern regarding drying and processing of hemp near other crops and residential areas. One commenter suggested that AMS support research on pollination and drift related to hemp production.

One comment asked USDA to clarify whether section 10114(a) of the 2018 Farm Bill extends to interstate banking, insurance, or financial services involving hemp and hemp products. According to the comment, it is not clear whether interstate commerce in hemp and hemp products necessarily includes the payment for any hemp and hemp products through various methods, such as wires, checks, automated clearinghouse transactions, credit card or other financial transactions, including loan proceeds.

One comment advocated the use of their company's blockchain technology to address industry and law enforcement concerns about chain-of-custody in sampling, transporting, and testing hemp.

One comment requested that a clear statement be included in the final rule that USDA concurs that the exportation of hemp and hemp products is legal. It noted that the 2018 Farm Bill does not prohibit exports, and stated, without providing any empirical evidence, that there is sufficient interest in exporting hemp and hemp products from the U.S. It also suggested that a dedicated tariff code for hemp and hemp-derived products be established to facilitate export trade.

*AMS Response:* These comments all address issues that are beyond the scope of the rule. This rule only covers the production of hemp. Issues such as promotion of hemp under a research and promotion program; adding this product to other programs including feeding programs or PACA; importing or exporting of hemp; who can produce hemp in the U.S.; processing the commodity; insurance and banking; research or setting production boundaries; requirements on further products such as CBD; or other subjects mentioned above, are not the subject of this rulemaking or within other USDA or federal, State, Tribal, or private industry responsibilities and authorities.

## Comments on the IFR's Regulatory Analyses

### *Civil Rights Review*

The IFR included a Civil Rights review that found the rule would not have adverse effects on protected persons or groups, deny them program benefits, or subject them to discrimination.

*Comments:* One comment indicated that small farmers face challenges related to costs of seed. Another commenter associated the destruction of non-compliant hemp as posing a great risk of economic hardship on hemp farmers, especially the small minority farmers.

Several comments from Indian Tribes explained that certain provisions of the IFR, for example laboratory DEA-registration requirements, the definition of key participants, and Tribal law enforcement availability, did not sufficiently account for the specific circumstances and challenges facing Indian Tribes across the nation such as the remote location of many Indian Tribes, the limited economic resources of Indian Tribes, and Tribal decision-making structures. Comments pointed out that this final rule must ensure Tribal civil regulatory authority to help Tribal nations build and implement successful plans. Other Tribal comments identified the requirements for the complete destruction of the plant as, "disproportionately economically disastrous for our small Native American farmers," explaining that Native American farmers tend to be significantly smaller and operate on very small margins.

One commenter suggested that AMS reconsider the potential civil rights implications of this rule on the convicted felons because the IFR, if unchanged, will have a disproportionate negative impact on both Black and Latino Americans, who according to DOJ data, represent 38.8 percent and 37.2 percent (respectively) of the total population of Federally sentenced drug offenders. The commenter compares this data to the data from U.S. Department of Health and Human Services' rates of illicit drug use among White Americans (9.5%), Black Americans (10.5%), and Latino American (8.8%).

Another commenter claimed that using "flawed/inaccurate science with lower standards is a direct example of failing to preserve the protection of the public at large," and "USDA cannot legally implement their proposed rules without violating the mission statement of the agency."

*AMS response:* AMS considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. Additionally, this rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination. This rule is neutral and of general applicability.

We also note that some of the burdens or hardship described in the comments are required by the 2018 Farm Bill. First, the 10-year ineligibility restriction applicable to persons convicted of a State or Federal felony is a requirement of the 2018 Farm Bill. Also, as stated previously the basis for the DEA lab registration is rooted to the statutory requirements of the Controlled Substances Act, that requires any laboratory that might potentially handle a controlled substance to undergo the DEA registration process and thus cannot be eliminated. Additionally, the 2018 Farm requires effective disposal of non-compliant plants.

Moreover, AMS conducted a Civil Rights Impact Analysis in accordance with USDA's Departmental Regulation 4300-004: Civil Rights Impact Analysis.<sup>30</sup> AMS's analysis did not find any evidence that the final rule would adversely or disproportionality impact hemp producers in protected groups, regions or Tribes as compared to the general population of hemp producers or State Departments of Agriculture.

### Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives when an action is deemed to have significant impacts. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity. Executive Order 13771 mandates that agencies provide the best approximation of total costs associated with a new or repealed regulation. AMS prepared a Regulatory Impact Analysis (RIA) with the purpose of accomplishing these objectives.

*Comments:* Very few comments addressed the RIA specifically, but we received many comments with information related to assumptions that fed into the RIA such as percent of hot

hemp, testing burdens, lab registration burdens. AMS addressed these comments in the general comment section and took into consideration information provided for the RIA.

One comment acknowledged that USDA's economic analysis was based on sound and reasonable methodology but said that its expectations were not confirmed by actual market events in 2019. The commenter compiled production data provided in other comments in an effort to present a more current analysis of the hemp market. The comment pointed out that the RIA underestimated the number of hemp production licenses that would be issued and hemp acres that would be planted in the 2019 growing season. According to the comment, while the RIA called only for a doubling of licenses beyond the 2018 benchmark, the actual rate of licenses increased by 476 percent in 2019. Similarly, the comment reported actual planted hemp acreage in 2019 to be close to 230,000 acres, well over the 155,000 acres assumed by the RIA. The comment went on to say that the rate of growth for new licenses outpaced the rate of growth for consumer sales by 3:1, while the RIA had assumed a 1:1 rate over the next four years. The comment explained that supply growth has outstripped demand and created significant market imbalance and, as a result, market prices have dropped and driven down revenues to hemp producers.

The comment cited the gross revenue for floral material estimated in Table 1 of the RIA, which ranges from \$2,333 to \$24,000 per acre under the assumption that two-thirds of an acre is planted for floral material. Based on market data published in November 2019, after the IFR's publication, the comment suggested that the actual range of gross revenue for floral material per two-thirds of an acre was \$2,728 to \$17,261. The comment then applied the variable cost of planting one full acre of floral material estimated in the RIA, \$28,638 per acre, to this range of gross revenue. This calculation resulted in a loss of \$11,377 to \$25,910 per acre, which the comment said is incorrect given that the variable cost per acre of floral material was deducted from the gross revenue per two-thirds of an acre. For an accurate estimate of net revenue, it stated that gross revenue and costs must be represented in terms of the same unit of measurement.

The comment suggested that the downstream effects of an unbalanced economic supply equation would further disrupt the profitability of sectors that are intended to support the transportation, processing, and retail

sales of the product. It cited sales data reporting a 50 percent decline in the price of CBD extracts and concentrates from April 2019, stating that the oversupply of hemp has affected the entire commercial supply chain.

The commenter disagreed with the methodology used to project the net social benefit of hemp per acre in the IFR, saying that methodology assumed social benefit is a static figure. The commenter asserted instead that social benefit is "a fluid figure that is heavily influenced by time and supply and demand economics" and that it will likely fall over time.<sup>31</sup>

Further, it argued that the estimated 2019 societal willingness to pay of \$2,650 per acre, which was calculated in the RIA using Kentucky grower sales and planted acreage, is not representative of the rest of the United States. Based on the hemp product sales in Chart 1 of the RIA, the estimated return to producers of processor sales of 31 percent, which was calculated in the RIA by comparing Kentucky grower and processor sales, and total U.S. planted acres estimated in Table 3 of the RIA, the comment calculates a 2019 national societal willingness to pay of \$2,325 per acre. This result indicates that the societal willingness to pay based on Kentucky data is 14 percent higher than the estimate for the United States as a whole. The comment also calculates a national societal willingness to pay for 2018 of \$4,047, which illustrates that a decline in societal willingness to pay of 42.5 percent occurred in 2019.

The comment cautioned that the net social benefit calculated in the IFR was over inflated because it represents a point in time during the industry's infancy. The comment argued that the industry faces a market depression and recommended a quota system for licensing classified by intended use. In this recommendation, the comment offered a detailed approach to estimating acreage required to meet demand for hemp grown for use in the CBD market. The analysis resulted in an estimated 44,509 acres required to meet demand in 2020, 83,336 acres for 2021, 188,558 acres for 2022, 255,899 acres for 2023, and 309,773 acres for 2024. The comment expanded upon its recommendation of a quota licensing system, suggesting that a number of licenses be granted by range of acreage, thereby ensuring that a share of licenses is reserved for small farmers.

Another comment asserted that unless the IFR definition of hemp is revised to include cannabis with a total THC level

<sup>30</sup> <https://www.ocio.usda.gov/sites/default/files/docs/2012/CRIA%20DR%204300-004-final.pdf>.

<sup>31</sup> <https://beta.regulations.gov/comment/AMS-SC-19-0042-1490>.

of not more than 1.0 percent on a dry weight basis, it will not be economically viable to grow hemp for flower in the U.S. According to the comment, if the THC limits of the IFR are maintained in the final rule, the RIA should be revised to reflect the impact of the rule on total yield and CBD concentration of harvestable flowers, reduced value of CBD hemp seed, and the unknowable market value of CBD. The comment predicted that although the value of hemp seed for flower might be reduced marginally, other input costs would remain very high.

One comment recommended differentiation between hemp biomass and hemp flowers in the IFR's analysis of market prices for floral material. The comment said that hemp biomass refers to full plant material, including stems, leaves, and flowers, while hemp flower refers to the part of the plant that contains trichomes which houses richly and densely populated cannabinoid content. The comment said the prices in the RIA are consistent with prices for hemp biomass, and suggested prices for hemp flowers ranging from \$25 to \$800 per pound, depending on the percentage of CBD present.

Two comments asserted that USDA grossly underestimated the sampling time and cost in the IFR. Comments were concerned that readers might assume hemp sampling and testing costs fees are preset. The comments suggested that hemp sampling is a more complex logistical problem than contemplated in the IFR because of the geography and scope of sampling on farms. The comments encouraged USDA to calculate anticipated sampling costs to include a minimum number of hours for each step in the sampling process, and to consider factors such as travel time and coordination of supplies and personnel for the sampling effort.

One comment disagreed with the IFR statement that the new hemp production program would expand production and sales of domestic hemp, benefitting U.S. growers and consumers. The commenter said that production costs for his CBD hemp farm were approximately \$16,000 per acre, but because of the IFR's restrictiveness and his resulting inability to bring the crop to full maturity, the crop would likely only return \$9,000 per acre. The commenter said they were unwilling to make that kind of risky investment and was unwilling to decide whether to plan

for future crops until USDA finalizes its rule.

*AMS response:* AMS is aware that the number of licenses and amount of acreage that were estimated in the RIA of the IFR were underestimated. Entrance of producers into the market spiked at an unexpected rate in 2019, driving up acreage along with licenses. AMS utilized the most current data available to it in its analysis of the hemp market in the IFR and the final rule.

Regarding the estimate in one comment of net loss ranging from \$11,377 to \$25,910 per acre, it is important for gross revenue and costs to be represented in the same unit of measure for an accurate net revenue calculation, which, in this case, they are not. The variable cost per one acre of floral material was deducted from the gross revenue per two-thirds of one acre of floral material, resulting in a larger loss than if calculated using the same unit of measurement. AMS has adjusted the calculation of net revenue in the table below using the market price data cited by the comment. AMS appreciates the comment's citation of its sources and utilized similar sources in the RIA of this final rule.

Planted acres	Yield	Price	Gross revenue	Variable cost	Net revenue
<b>Low estimate</b>					
2/3 .....	1,000	\$4.09	\$2,727	\$19,092	\$(16,365)
1 .....	1,000	4.09	4,090	28,638	(24,548)
<b>High estimate</b>					
2/3 .....	1,200	21.58	17,264	19,092	(1,828)
1 .....	1,200	21.58	25,896	28,638	(2,742)

Furthermore, AMS understands and appreciates the commenter's argument that net social benefit and societal willingness to pay are over inflated in the IFR. Due to the relative scarcity of industry data, AMS made many assumptions in its analysis in the IFR, some of which were not realized. In order to caution industry stakeholders of the volatility of the hemp market, however, AMS used variable cost estimates to calculate net returns to producers, which ranged from a loss of nearly \$17,000 to a gain of \$6,240. In the single year since publication of the IFR, a greater amount of data has become available to AMS, which allows the analysis in the final rule to rely less on assumptions that may not be actualized.

AMS only has the authority regarding hemp regulation granted to it by the 2018 Farm Bill. The recommendations to establish a quota system for issuing

licenses based on intended use and to revise the definition of hemp such that it includes cannabis with up to 1.0 percent total THC on a dry weight basis are outside of the authority of USDA. The 2018 Farm Bill provided USDA no authority to regulate production volume. Additionally, USDA cannot adjust the statutory definition of hemp.

AMS has also reviewed the sampling procedures and costs characterized in approved state and Tribal plans to better estimate the time and resultant fees that will be charged to producers for sampling in the hemp program.

**Small Business Impacts**

AMS performed a Regulatory Flexibility Analysis (RFA) in conjunction with the IFR that considered the effects of the rule on small businesses particularly.

*Comments:* One organization that represents the views of small entities stated that small hemp producers have significant startup costs that affect their ability to be competitive in the hemp industry. The comment notes that hemp production is labor-intensive and has licensing and regulatory costs that are not typically incurred by producers of other agricultural crops. Small entities indicated that only those businesses with adequate capital and large-scale operations would be able to survive and comply with the requirements of this rule. Further, comments conveyed that this rule will raise real barriers to entry for small and disadvantaged producers and could prevent these critically important producer groups from even entering the hemp industry.

Other comments stated that the negative effects of the regulatory incongruence in the IFR

disproportionately affect farmers, in particular new and small farmers—and small or already disadvantaged hemp farmers will face additional risks if the IFR is not changed.

One comment claimed the 2014 and 2018 Farm Bills presented an innate prejudice for institutional research, including State departments of agriculture and institutions of higher education and this prejudice continued in the IFR. The commenter says this is similar to the bias of California's draft State plan, where individuals permitted to be grower or breeders, but the program's compliance burdens are effectively beyond the reach of most individuals.

Commenters stated that this rule will disrupt small producers who were successfully producing hemp under prior pilot programs. One organization reported that hemp producers have stopped growing hemp altogether until they can be certain about what the requirements for producing hemp. Comments also reported that some hemp buyers have not renewed their contracts. Comments stated that several of the provisions of this rule impose unnecessary burdens on small entities. Comments suggested that many of the sampling and testing requirements should be revisited and alternatives should be considered and analyzed to minimize the burden to small producers. In addition, comments said that small business are very concerned about the risk of losing their economic investment due to mandatory disposal, the lack of control over growing conditions, genetics of neighboring crops, and timing and precision of the testing.

Comments from State departments of agriculture expressed strong concern as to the additional burdens they would incur as a result of the rule. These burdens may be directly passed to small producers in the form of delayed responses to license applications, renewals, and appeals; testing backlogs; duplicative reporting requirements; new license fees; and other programmatic issues.

One comment claimed that, based on six years of administering their hemp program, many of the most rigid requirements of the IFR are not only unnecessary, but also likely to have a disproportionately adverse impact on new farmers and farmers with smaller operations. According to the comment, these farmers already face great risk in the current marketplace, and need regulatory help, rather than impediments, in order to grow and thrive. The comment urged AMS to provide a more sensible, flexible, and

practical regulatory scheme to encourage industry growth.

*AMS response:* AMS understands that there is a great deal of uncertainty in the hemp industry currently and has made efforts to minimize any burden which may befall producers as a result of this rule. To that end, USDA is not charging producers any fees for licensing or collecting any fees from producers to support AMS' administration of the hemp program. The fee structure developed by States and Indian Tribes to administer their hemp programs lies outside of the purview of USDA. On average, AMS anticipates total fees paid by producers under a State or Tribal Plan to amount to \$800 per grower. This amount includes licensing and other fees intended to generally fund the operations of States or Tribal Programs. Fees for sampling and testing, on average, amount to about \$300 per lot. The cost for an annual background check for three key participants is \$54. AMS estimates an annual reporting and recordkeeping burden of \$129 per grower. Altogether, these costs total \$1,283 per grower, assuming one lot requires sampling and testing. This total cost is 0.1 percent of \$1 million, which is the largest amount in annual receipts that a grower may receive to be considered to be a "small business" under the Small Business Size Standards of the U.S. Small Business Administration (SBA).

In response to comments, AMS has revised its sampling and testing methodology to allow for performance-based sampling, which should reduce the burden on all producers, large and small. Section 990.3 details this revised methodology. In addition, AMS has modified its disposal requirements, and allows for remediation of noncompliant crops. These remediation options are described in § 990.27.

AMS understands the concerns raised by state departments of agriculture regarding the requirements of administering a commercial hemp program. For this reason, AMS has made every effort to provide States and Indian Tribes flexibility to administer their hemp programs, including whether they charge for fees or other costs or cover those expenses from other State or Tribal resources. If the burden for a State or Indian Tribe to administer its own hemp program remains too great, however, the State or Indian Tribe may elect to participate in the Federal plan and allow AMS to administer the program. By providing this flexibility, USDA believes it is less likely that the burdens on State and Tribal resources will be passed on to small businesses.

### Tribal Matters

The IFR provided that States and Indian Tribes may submit hemp production plans to USDA for approval. Individual producers from States or Tribal territories that do not have USDA-approved plans may file separate applications for hemp production licenses under the general USDA hemp production plan. Below are several comments and AMS's responses regarding matters of particular concern to Indian Tribes and Tribal members.

*Comments:* Comments said the regulations fail to treat Indian Tribes on an equal basis with States by repeatedly failing to include the term "Tribe" when referring to the State and local jurisdictions. According to comments, by doing so, the regulations fail to respect Tribal sovereignty and self-government.

*AMS response:* USDA agrees that Indian Tribes must be treated the same as States under the regulations. There were a few occasions where USDA mistakenly left out "Tribe" from the language in the regulation. USDA is correcting these mistakes in the IFR by revising the language of the final rule to insert "Tribe" after "State" in the definition of *Law Enforcement Agency* in § 990.1; insert "Tribe" after "State" in § 990.24(a); and revise § 990.40(d), which incorrectly referred to "States and territories of Indian Tribes," to refer to "States and Indian Tribes".

*Comments:* Several comments asserted that USDA should not define "territory of an Indian Tribe" and claimed that by doing so, USDA violates Tribal treaty rights to farm on Tribal territories. Comments argued that such a definition should be left up to each Indian Tribe. Further, comments contended that the definition of "territory of an Indian Tribe" at § 990.1 inappropriately refers to a criminal statute, 18 U.S.C. 1151, to define an Indian Tribe's territory and regulatory jurisdiction. Other comments supported the use of the Indian country definition, but asked for the removal of the requirement that the lands must be within the Indian Tribe's jurisdiction, primarily because it causes uncertainty as to whether Indian Tribes may regulate hemp production on non-Indian owned fee lands within a Tribe's territorial boundaries. Comments also asked that AMS clarify that States cannot interfere with hemp production within the territory of an Indian Tribe.

*AMS Response:* If an Indian Tribe does not assume primary jurisdiction over the Tribe's Indian territory, USDA has jurisdiction over the hemp production on an Indian Tribe's

territory pursuant to the 2018 Farm Bill. USDA, therefore, must know the limits of its jurisdiction over such Indian territory, just as it must know its jurisdiction over lands ordinarily within State jurisdiction.

The IFR defined “territory of the Indian Tribe” at 7 CFR 990.1 as having the same meaning as “Indian Country” in 18 U.S.C. 1151. Upon consideration of comments submitted by Indian Tribes, USDA concurs that reference to the criminal law definition of Indian country could be confusing.

Therefore, in the final rule USDA revised the definition of “territory of the Indian Tribe” to incorporate language from other Federal statutes, but without explicitly cross-referencing such statutes. Specifically, the final rule defines “territory of the Indian Tribe” to mean (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

In the 2018 Farm Bill, Congress provided authority for any Indian Tribe to seek USDA approval to become the primary regulator of hemp production within the “territory of the Indian Tribe.” The 2018 Farm Bill did not provide a definition of the term territory of the Indian Tribe, and there is no universally accepted definition of that term, or similar terms, within the field of Federal Indian law. In describing jurisdictional boundaries associated with Indian Tribes, various Federal statutes use several terms, including Indian country, Indian lands, Federal Indian reservations, and areas within the Indian Tribe’s jurisdiction, among others.

Thus, by its very nature and history, the statutory term “territory of the Indian Tribe” is ambiguous. According to the Indian canon of construction, “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their

benefit. . . .” *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (citations omitted). In addition, USDA may address ambiguities in a statute that it administers, with any reasonable interpretation of the ambiguous term entitled to judicial deference. *Chevron U.S.A. Inc. v. Nat. Res. Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). In this case, Congress provided no indication that the term “territory of the Indian Tribe” should apply more narrowly than similar terms that have been defined and interpreted in other Federal statutes and programs. Moreover, a narrow interpretation that excluded nontribal fee lands within reservations would perpetuate the problem of checkerboard jurisdiction over lands within Indian reservations, adding unnecessary confusion and uncertainty to the challenges of implementing the hemp program in Indian country. Therefore, the USDA includes a regulatory definition of the term “territory of the Indian Tribe” that is based on the definition of Indian country in 18 U.S.C. 1151 and the definition of Indian lands in the Indian Gaming Regulatory Act, 25 U.S.C. 2703(4).

The definition includes all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, which encompasses on-reservation parcels held in fee simple by non-members of the Indian Tribe. Similar provisions are found in the criminal jurisdiction definition of Indian country, 18 U.S.C. 1151; in the Clean Water Act, 33 U.S.C. 1377(h); the Clean Air Act, 42 U.S.C. 7601(d)(2)(B).

The U.S. Environmental Protection Agency (“EPA”) interpreted the statutes that it administers as providing authority to Indian Tribes over non-Tribal fee lands within Indian reservations. EPA Final Rule: Indian Tribes—Air Quality Planning and Management, 63 FR 7254 (Feb. 12, 1998); EPA Interpretive Rule: Revised Interpretation of Clean Water Act Tribal Provision, 81 FR 30,183 (May 16, 2016). EPA found that the Clean Water Act and Clean Air Act provided a delegation of authority to Indian Tribes over non-Tribal fee land within reservations. See *Arizona Public Serv. Co. v. EPA*, 211 F.3d 1280 (D.C. Cir. 2000). The agency found legislative intent and a common-sense reasoning to treat Indian reservations holistically for purposes of environmental regulation.

Similarly, USDA interprets the 2018 Farm Bill as authorizing Indian Tribes to become—with USDA’s approval of a hemp plan—the primary regulators of

hemp production within their territories, including on nontribal fee lands within reservations. This authority applies without regard to the Indian Tribe’s ability to demonstrate inherent regulatory authority over non-Indians under the factors set forth in *Montana v. United States*, 450 U.S. 544 (1981). Additionally, this definition will make clear the area over which USDA will have regulatory authority including licensing if the Indian Tribe does not have an approved plan or a plan submitted to USDA for approval.

*Comment:* Some comments said Indian Tribes did not have the benefit of operating under the 2014 Farm Bill and, consequently, have not developed the farming techniques and regulatory systems that States have. Therefore, according to comments, Indian Tribes should be given a grace period while they develop best practices.

*AMS response:* Not all States operated under the 2014 Farm Bill, and some Indian Tribes did enter into Tribal—State agreements under the 2014 Farm Bill. Therefore, establishing a regulatory grace period for Indian Tribes only is not workable. Indian Tribes may take advantage of training and technical assistance offered by the USDA and other entities to ensure that they implement the best systems possible.

*Comments:* Some comments claimed that negligent violations by Indian Tribes under § 990.6 may cause Indian Tribes to be ineligible for other programs.

*AMS response:* The 2018 Farm Bill describes three types of negligent violations under State and Tribal plans. The negligent violations detailed in § 990.6 are required to be included in State and Tribal plans pursuant to the 2018 Farm Bill.

*Comment:* A comment contended that the requirement for a geospatial site identification at § 990.3(a)(1)(ii) is too expensive for Indian Tribes, unnecessary, and not readily available. Comments said the Department of the Interior has land records that could be used to obtain necessary information.

*AMS response:* A legal description of the land where hemp is grown is required by the 2018 Farm Bill. Geospatial location is one form of meeting such requirement. Producers are required to provide information to FSA on the geographical location of hemp production. FSA offices will provide assistance in identifying such location at no cost to producers.

*Comments:* Some comments said USDA should conduct more Tribal consultations and provide USDA and DEA training for hemp producers. One Indian Tribe requested more time to

allow Indian Tribes to organize a Tribal Advisory Council of Tribal Leaders to continue with the development and implementation of federal hemp policy.

*AMS Response:* In addition to previous Tribal consultations and extending and reopening the IFR's comment period, USDA added a September 2020 Tribal consultation to receive additional information, particularly from 2020 growing season producers. See the section on *E.O. 13175 Consultation and Coordination with Indian Tribal Governments* in this document for further discussion about the consultations. If Indian Tribes organize a Tribal Advisory Council of Tribal Leaders, USDA would appreciate any future feedback. Additionally, USDA is available to provide technical assistance when requested, including training. USDA is adding training for sampling to its website.

*Comments:* Comments said that Indian Tribes and individuals within the territory of the Indian Tribe should not have to be regulated by States, but should be able to go directly to USDA for licensing if the Indian Tribe opts out of developing its own Tribal plan and the Indian Tribe does not otherwise prohibit hemp production.

*AMS Response:* Subpart C, the USDA Hemp Production Plan, governs hemp producers in the absence of a Tribal plan. Therefore, any Indian Tribes or individuals wishing to produce hemp must comply with those regulations if not covered under a State or Tribal plan. If an Indian Tribe decides not to develop its own hemp plan, a producer may directly apply for a USDA license. States were not delegated authority under the 2018 Farm Bill to regulate hemp production within the territory of an Indian Tribe.

*Comment:* Indian Tribes should be allowed to implement their Tribal preference laws.

*AMS Response:* Nothing in the IFR or the final rule prevents Indian Tribes from implementing their Tribal preference laws.

*Comment:* A comment said that Tribal ordinances and interstate commerce regulations need to address price gouging in seeds and input.

*AMS Response:* This comment is outside the scope of this rule.

*Comment:* A comment said the Bureau of Indian Affairs and USDA should review 25 CFR part 162 governing agriculture and business leases to ensure that the hemp regulations here do not conflict with that part or cause additional regulatory hurdles.

*AMS response:* 25 CFR part 162 establishes certain requirements for

leasing trust or restricted Indian lands. USDA conferred with the Department of the Interior, the agency regulating Indian land, and did not identify any conflicts between the two sets of regulations.

*Comment:* A comment suggested USDA hire an Indian law expert to assist with development of the final rule.

*AMS response:* USDA agreed and hired a consultant with 40 years-experience as an Indian law attorney to assist with the development of the final regulations and the review of Tribal plans.

*Comment:* Comments said the criminal history checks required by the IFR should be expanded to include the Department of Justice Tribal Access Program (TAP). According to comments, those using TAP would then be able to directly access criminal history checks. Comments also said the regulations need to clarify whether the criminal history check can be a name check or a finger-print check.

*AMS Response:* USDA conferred with the DOJ Office of Tribal Justice and was informed that Indian Tribes can use the TAP program to access the FBI Identity History Summaries. The FBI Identity History Summaries may be based on name check or a finger-print check.

*Comment:* Comments noted that the term "key participant" is defined at § 990.1 in a manner that is not necessarily consistent with an Indian Tribe's unique organization and methods of doing business. Comments explained, for example, that an Indian Tribe may be the owner of a hemp farm. Comments asserted that although the Indian Tribe's governing council may be the ultimate decision-maker as the owner, it would not be appropriate to include them in the felony and background investigations. Therefore, comments said Indian Tribes should be permitted to identify their own "key participants" if they are operating under a USDA plan and the requirements of § 990.22.

*AMS Response:* USDA understands the concerns raised by Indian Tribes regarding the application of the criminal history report requirement and the felony conviction restriction on Tribal leaders. However, USDA must ensure that entities operating under a USDA plan comply with the felony conviction restriction in the AMA. For reasons explained in the IFR, USDA believes that the appropriate approach in determining who participates in the program, and therefore subject to the felony conviction restriction, is to focus on those who exercise executive managerial control over hemp

production. USDA also believes that this focus should be consistent across the USDA plan regardless of the person who is applying for a license. For the foregoing reasons, USDA has clarified the definition of key participants in the final rule to provide that the definition "does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production." AMS notes that an Indian Tribe may adopt its own hemp plans subject to USDA approval. When adopting a hemp plan, the Indian Tribe can determine who participates in its plan and will be subject to a criminal history check.

*Comment:* USDA received a comment that it should affirm Tribal sovereignty by not allowing other federal agencies, such as the DEA, to interfere with Tribal hemp remediation.

*AMS Response:* USDA does not have the authority to control the actions of other federal agencies acting properly within their authority.

*Comment:* USDA received comments that USDA owes a trust responsibility to Indian Tribes. According to commenters, that trust responsibility requires acknowledging the unique challenges that Indian Tribes face including that (1) most tillable land was taken from Indian Tribes during homesteading; (2) Tribes' participation in the farm program results in only a 60 percent yield of their non-Indian counterparts; (3) the finance system is usurious as financiers discount the value of Tribal assets or refuse to consider them at all; and (4) American Indian producers will be disproportionately disadvantaged because their farms are significantly smaller and are generally run with only one crop by families with small margins.

*AMS Response:* USDA acknowledges that it has a special government-to-government relationship with Indian Tribes, and believes that, in preparing and issuing this final rule it has acted in accordance with that relationship. In response to concerns regarding the unique challenges Indian Tribes face, as explained in the Civil Rights Review of this final rule, AMS conducted a "Civil Rights Impact Analysis" and did not find any evidence that the final rule would adversely or disproportionately impact Indian Tribes or Tribal members producing hemp as compared to the general population of hemp producers or State Departments of Agriculture. Indian Tribes may take advantage of training and technical assistance offered by the USDA to ensure that they

implement the best systems possible. Additionally, USDA is available to provide technical assistance when requested.

### State and Tribal vs. Federal Regulation

The preamble of the IFR stated that “[n]othing preempts or limits any law of a State or Indian Tribe that regulates the production of hemp and is more stringent than the provisions in the 2018 Farm Bill.” Further, Section 297B of the AMA expressly states that it does not preempt a State or Indian Tribe’s ability to adopt more stringent requirements or to prohibit the production of hemp. This was codified in the IFR in § 990.3(b)(1), which provides that nothing in the part preempts or limits any law of a State or Indian Tribe that regulates the production of hemp and is more stringent than this part or Subtitle G of the Act.

*Comments:* Many of the comments received stated that the provisions of the IFR were more stringent than the regulations of pilot programs established by States under the authority of the 2014 Farm Bill. In fact, the majority of all comments received either took exception to the perceived increase in regulatory requirements for hemp production under the IFR, or presented recommendations for alternative requirements under the final rule that would not be as restrictive or burdensome as the provisions in the IFR.

No comments were received that either affirmed or opposed the rights of States and Indian Tribes to promulgate more stringent regulations for their jurisdictions. However, one comment said rather than using the flexibility allowed in the law to let states develop sensitive state plans, the IFR had rigid controls not required by law or correlated to the relatively low-level risk of non-compliant hemp. The comment further said USDA should establish baseline requirements but provide States flexibility to consider the dynamics of agricultural production that depend on farm and field conditions, weather, and the timing appropriate for planting, harvesting, the varieties being cultivated and the marketing of crops. Other comments agreed with recommendations to allow States and Indian Tribes to determine certain provisions that are not central to the minimum regulatory requirements of the IFR, such as application windows and reporting.

*AMS response:* The 2018 Farm Bill expressly preserved the ability for State and Tribal hemp production plans to establish additional provisions stricter than the baseline regulations required

by the 2018 Farm Bill. These baseline regulations require all State and Tribal plans to include certain minimum requirements for licensing, sampling, testing, disposal, and information collection. These requirements could certainly be considered “more burdensome” than certain State hemp production plans operated under 2014 Farm Bill pilot program provisions, but they are intended to provide consistency and transparency among the U.S. hemp industry as it matures. Prior to the passage of the 2018 Farm Bill, States operating hemp pilot programs could administer these programs with minimal Federal oversight, and without baseline requirements around sampling, testing, and other program requirements because the 2014 Farm Bill programs are for research. The 2018 Farm Bill established baseline requirements for hemp production for hemp production across the U.S. regardless of the purpose of the production.

### Preemption

*Comment:* AMS received comments asserting that the IFR did not abide by the mandate of the 2018 Farm Bill that there be no preemption of state or Tribal laws that regulate the production of hemp and are more stringent than the hemp provisions in the federal statute.

*AMS response:* Section 297B(a)(3) of the AMA provides that for States and Indian Tribes with primary regulatory jurisdiction over the production of hemp, there is no preemption if that State or Indian Tribe both regulates the production of hemp and that regulation is more stringent than the 2018 Farm Bill or the implementing regulations. Thus, the no preemption provision of the 2018 Farm Bill is to make clear that more stringent requirements are not preempted. AMS finds that the 2018 Farm Bill requires the implementation of federally mandated minimum standards, which all jurisdictions must follow, allowing for certain further restrictions by States and Indian Tribes.

### Recordkeeping Requirement

*Comment:* One commenter argued that the recordkeeping requirements of the IFR violated the 4th Amendment’s prohibition against unreasonable search and seizure and was “arbitrary and capricious” and a violation of the APA.

*AMS Response:* The 2018 Farm Bill established a hemp production program in the U.S. subject to oversight from the Secretary of Agriculture. Part of that congressional mandate is for the Department of Agriculture to establish a plan by which it collects information from producers to ensure compliance. While hemp is no longer a Schedule 1

drug, USDA can only make the determination of whether the crop is legal hemp (which it regulates) or illegal marihuana (which it does not regulate) through the mechanisms Congress has authorized. Recordkeeping requirements are paramount to that determination, which is required by Congress. AMS is retaining the recordkeeping requirements of the IFR.

### APA Notice and Comment Concerns

*Comment:* Some commenters claimed that in issuing an IFR, AMS acted arbitrarily and capriciously in violation of the APA. Commenters argued that the good cause statement included in the IFR was not adequate to support its issuance rather than going through notice and comment rulemaking.

*AMS Response:* AMS does not agree with these comments and believes that there was good cause to issue the IFR. AMS has encouraged public input on the IFR since its issuance and has provided many opportunities for public comment.

### Criminal Background Checks and Definition of Key Participants

*Comment:* Several commenters argued that the restrictions on participation in hemp production for people with criminal convictions related to a violation of a state or Federal controlled substance law are not necessary and that hemp should be treated the same as all other commodities, which do not have similar restrictions. Commenters argued that there should be an exception for people with disqualifying criminal convictions who could demonstrate rehabilitation and that this restriction conflicts with state statutory requirements in some states. One commenter argued that USDA should conduct all criminal background checks rather than States or Indian Tribes.

*AMS Response:* AMS acknowledges various stakeholders’ advocacy for reduced restrictions to entry in hemp production. However, the restriction on participation-based on a criminal conviction for violation of a state or Federal law related to controlled substances is a requirement established by statute and AMS does not have the authority to change to waive this restriction.

### Definition of Key Participants

*Comment:* Some commenters requested that AMS change the definition of key participants to more clearly state which individuals within a business entity would be required to submit a criminal history report. One commenter requested that AMS align the definition of key participant with

the definitions of “legal entities” and “beneficial owners” in Department of Treasury regulations. Another commenter suggested that AMS define who must submit a criminal history report in States and Indian Tribes that have an approved plan for primary regulatory authority over hemp in their jurisdiction.

*AMS Response:* AMS acknowledges various stakeholders’ advocacy for a single definition of “key participants” for all hemp producers. However, AMS will not require that States or Indian Tribes with an approved plan for primary regulatory authority over the production of hemp in their jurisdiction adopt the USDA definition of “key participants.” States and Indian Tribes are free to incorporate the AMS definition of key participants into their plan but they are not required to do so. They must, however, define who participates in their plan and, for each license or authorization they issue, must identify at least one individual who will be subject to a criminal history check. The Department of Treasury definitions of “legal entities” and “beneficial owners,” while similar to the definition of “key participants” adopted herein apply broadly to the corporate structure of a business entity. USDA finds the “key participant” definition to best describe those individuals responsible for compliance with this program or “leadership structure of a business entity.”

## X. Regulatory Analyses

### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Domestic Hemp Production Program’s information collection requirements have been previously approved by Office of Management and Budget (OMB) and assigned OMB No. 0581–0318. The 60-day public comment period was imbedded in the interim final rule (IFR) which was published on October 31, 2019, and ended on December 30, 2019. Because of the very tight timeline for publishing the IFR, OMB granted conditional emergency approval of these seven forms on December 3, 2019. The USDA Office of Chief Information Officer (OCIO) published the 30-day Notice for the three-year renewal at 85 FR 36828 on Thursday, June 18, 2020.

While writing the IFR there was very limited data available to make the initial burden calculations under the Paperwork Reduction Act (PRA). Since the IFR was published, USDA has been able to gather much more accurate data

on the number of producers, disposal rates, and time burdens for completing the forms. Because of this new information, AMS is updating the burden calculations currently approved by OMB. AMS will submit an updated Information Collection to align the new calculations in the FR with the 0581–0318 package.

AMS received over 4,600 comments in the first public comment period and 1,100 during the second comment period on the overall regulation. A specific analysis of each topic area in the comment analysis section of the final rule. AMS did not receive public comments specifically on the PRA nor on the time burden hour calculations to complete any of the forms. One comment from the Alabama Department of Agriculture wrote that 10 minutes for a State or Tribal producer license application was too low, so that has been increased to 20 minutes.

AMS used an initial estimate of 9,000 total producers for the IFR. This was based on the limited data from State Departments of Agriculture and the hemp advocacy group, Vote Hemp. Based on a review of hemp production data from State Departments of Agriculture, and the data reporting services from Hemp Benchmarks and Vote Hemp, AMS now estimates 20,000 producers as a yearly average to use for the purposes of reporting calculations. These numbers will be updated every three years. While the current percent of hemp growers licensed under USDA is drastically smaller than this, AMS assumes approximately 20 percent or 4,000 producers will be licensed under the USDA plan, and the other 80 percent or 16,000 producers licensed under State and Tribal USDA-approved programs.

The description and function of the seven reporting forms remains the same from the IFR and initial OMB approval. These forms require specific information be submitted by States and Tribes operating their own domestic hemp plans, from producers participating in the USDA Plan, and from laboratories testing for THC content. Reporting and recordkeeping burdens reflecting revised reporting hours and the projected additional producers are described in the following sections. All time and cost figures have been approximated to the nearest whole number. The table below explains these changes numerically.

### Costs of Reporting and Recordkeeping

The initial estimate of 100 State and Tribal plans remains accurate since the majority of States and Indian Tribes will have their own programs. As of the Fall

of 2020, USDA has already approved 65 individual State and Tribal programs, with more to come. The amount of State approved programs will also increase once the 2014 Farm Bill pilot authority expires and those additional States submit plans. States and Indian Tribes with approved plans are required to report certain information to USDA through three Forms: The “State and Tribal Hemp Producer Report”, the “State and Tribal Hemp Disposal Report”, and the “State and Tribal Hemp Annual Report”. USDA collects information from all hemp producers under a State, Tribal or USDA program through the FSA report form “Report of Acreage”. USDA collects information from USDA producers through the “USDA Producer Application”, the “USDA Annual Report” and the “USDA Disposal Report”. Laboratories provide information on the “Laboratory Test Report”.

AMS has updated PRA calculations using the Occupational Employment Statistics Survey of the Bureau of Labor and Statistics<sup>32</sup> using the 2019 data. The mean hourly wage of a compliance officer, as reported in May 2019, was \$35 per hour. This is the same numerical value as the May 2018 report. Assuming 39 percent of total compensation accounts for benefits, the total compensation of a compliance officer is \$57 per hour. This \$57 per hour will be used throughout the PRA section.

### Respondents: States or Tribes With Approved Plans

AMS initially estimated that the time required for States and Indian Tribes to fill in the information for each of these forms will be 20 minutes or 0.33 hours with a 5 minute or 0.08 hours record keeping burden. This estimate has been updated from 20 minutes to 60 minutes or one hour. The “State and Tribal Hemp Producer Report” and the “State and Tribal Hemp Disposal Report” are due to USDA every month. The “State and Tribal Hemp Annual Report” form must be submitted to USDA once per year. Similar to the other two State and Tribal forms, the annual time burden was initially 20 minutes but has been updated to 60 minutes. The time burden for each State and Indian Tribe to complete and maintain these three forms is now 12 hours for each monthly form and 1 hour for the annual report, for a total of 25 hours per State and Tribe with an approved plan. Given the estimated number of approved State and Tribal plans is 100, the total cost is 250 hours and \$14,250.

<sup>32</sup> <https://www.bls.gov/oes/home.htm>.

**Respondents: Producers Under State or Tribal Plans (Information Only, Not Completing the Forms)**

The time required of producers to supply the information for the “State and Tribal Hemp Disposal Report” and the “State and Tribal Hemp Annual Report” will stay the same at 10 minutes for reporting and 5 minutes for recordkeeping burden for each producer for these two forms. The “State and Tribal Hemp Producer Report” time estimate is now increased to 20 minutes with a 5 minute record keeping burden for each producer, per the suggestion

from the Alabama Department of Agriculture. In the IFR, AMS originally estimated that the majority of States and Indian Tribes would have three-year producer licenses, and producers would only submit this information once every three years. Since approving 60 State and Tribal plans, the majority of State and Tribal licenses are issued on a yearly basis instead. AMS estimates that the 16,000 State and Tribal producers will submit license information each year for State and Tribal programs. In addition to obtaining a license, all hemp producers are required to prove that they do not have prior drug related

convictions that would disqualify them from participation in the program. States have some flexibility in what they require of applicants to make this demonstration. However, for purposes of this analysis, AMS will use the cost of the FBI Identify Summary, \$18, as a proxy cost for all background reports, and 3 key participants for each license each year, although if we were to take into account comments, it is likely there will be more than 3 key participants each year. In the chart below is a cost breakdown of the application and background check for producers under a State or Tribal program.

FBI Identity Summary	Number of respondents	Number of responses	Total annual responses	* 3 Key participants	Cost of background check (\$18)	Plus burden cost of application	Total cost
Cost for State and Tribal producers (3 key participants every year) .....	16,000	1.0000	16,000.00	48,000.00	\$864,000.00	\$379,666.00	\$1,243,666.00

In the IFR, AMS estimated that 20 percent of lots will need to be disposed even though the current rate of disposal is closer to 12%. This assumption is based on the increased number of new entrants to the market who may not be successful in their first year or two. AMS is introducing a new performance-based method to sampling, which will decrease the amount of testing and noncompliant tests. Therefore, AMS estimates that 1,600 lots will be disposed under State and Tribal programs. The producers under a State or Tribal program will provide their disposal information to their individual regulatory body. The States and Indian Tribes will then use that information to complete the monthly “State and Tribal Hemp Disposal Report”.

These are just the costs and burden of collecting and maintain the information associated with the disposal, not the actual disposal. The actual cost of disposing of the non-compliant “hot” hemp is discussed in the RIA.

In total, producers under a State or Tribal program provide information and

hold records for three forms. The total time burden for these producers providing and maintaining this information is estimated at 11,061 total hours and \$630,466.

**Respondents: Producers Participating in the USDA Plan**

To produce hemp under the USDA Plan, a producer, which may be an individual producer or a business, completes the “USDA Hemp Plan Producer Licensing Application” and an FBI Identity Summary. If all parts of the application and summary are valid, AMS issues a license. The total burden per respondent of this form will maintain the same as in the IFR; 10 minutes for the time and 5 minutes for record keeping for a total of 15 minutes, or .25 hours. Licenses under the USDA Plan must be renewed every three years, so each producer only submits this information once every three years. In the IFR, AMS initially estimated that there will be 1,000 participants in the USDA Plan. AMS has now updated this estimate to be 20 percent of the total

hemp producers, or 4,000 producers each year. Because the USDA license is valid for three years, approximately 1,332 producers will complete this form each year. The total annual burden for this form is 544 hours and \$31,603.

In addition to the “USDA Hemp Plan Producer Licensing Application” submitted once every three years, producers must submit criminal history reports for each of their key participants. AMS estimates each producer to have three key participants submit criminal history reports to USDA. The cost of a criminal history report is \$18 apiece, so three key participants would cost \$54 per participant. As stated previously, AMS estimates that it will receive 1,332 license renewals in each year. Each of these 1,332 renewals will include a background summary for three key participants. Adding the cost of 1,332 renewals at \$71,928 with the cost of the background check is \$31,603 for the renewals and means there is an annual cost of \$103,531.

FBI Identity Summary	Number of respondents	Number of responses per respondents	Total annual responses	* 3 Key participants	Cost of background check (\$18)	Plus burden cost of application	Total cost
Cost for USDA producers (3 key participants every three years) .....	4,000	0.3330	1,332.00	3,996.00	\$71,928.00	\$31,603.00	\$103,531.00

Similar to the required annual report submitted by States and Indian Tribes to USDA, producers operating under the USDA Plan must submit the “USDA Hemp Plan Producer Annual Report” to USDA each year. AMS estimates the time burden of submitting this form will maintain the same, at 25 minutes, or 0.42 hours, per respondent. AMS has updated the initial estimate of 1,000 participants in the USDA Plan, to 4,000 producers. Therefore, the total burden of this form has increased from 416 hours to 1,665 hours, costing \$94,916 annually.

When a hemp sample tests above the acceptable hemp THC level, the material from the specific lot must be disposed. The producer and disposal agent must complete the “USDA Hemp Plan Producer Disposal Form”. The burden for this form will stay at 25 minutes, or 0.42 hours, per respondent.

Using the same assumptions regarding the prevalence of non-compliant crops and the costs of disposal that were used in generating the estimates of hemp disposal reporting (and disposal) for State and Tribal programs, the 4,000 producers that will participate in the USDA Plan will generate 400 samples that test high for THC content. The total reporting burden of this form will amount to 167 hours and cost \$9,492 annually.

Altogether, the annual burden for the USDA producers completing and

maintain the three USDA forms “USDA Hemp Plan Producer Licensing Application”, the “USDA Hemp Plan Producer Disposal Form”, and the “USDA Hemp Plan Producer Annual Report” amounts to an annual total of 2,386 hours and a cost of \$136,011.

#### **Respondents: Laboratories**

The 2018 Farm Bill requires that all domestically produced hemp be tested for total THC content on a dry-weight basis, whether produced under a State or Tribal Plan or the USDA Plan. Using data from FSA the initial estimate of two lots of hemp per producer remains accurate. However, the new performance-based sampling process will decrease the number of total samples that are collected and tested.

AMS requires all laboratories testing hemp for THC to submit all test results, whether passing or failing, via the “Laboratory Test Results Report”. AMS maintains the estimated reporting and recordkeeping burden for this form at 35 minutes, or .58 hours. AMS originally estimated that 7,700 total hemp producers would submit 15,400 samples to test. AMS has updated this estimate to 8,000 total tests annually. Therefore, the total annual burden of these tests and the accompanying “Laboratory Test Results Report” form decreased from 8,399 hours to 4,664 hours, and costs \$265,848.

#### **Respondents: All Producers**

The FSA collects information on crop acreage through the “Report of Acreage” form. Hemp producers under all plans are required to fill in the information for this form once they receive their license or authorization from USDA, a State, or Indian Tribe and have planted the crop. AMS will keep the initial reporting burden and record keeping burden at 35 minutes, or 0.58 hours. AMS has added 60 minutes or one hour for the travel time to and from the FSA office, for a total of 90 minutes. With the increased number of producers and the addition of travel time, AMS estimates the burden for the 20,000 producers will be 31,660 hours and cost \$1,804,620.

#### **Total Reporting and Recordkeeping Costs for All Respondents**

Altogether, the annual burden for reporting and recordkeeping for all respondents is 52,296 hours, costing a total of \$2,980,864 per year. This is the sum of the annual burden of reporting and recordkeeping to States and Indian Tribes operating their own plans, to producers participating in the State and Tribal Plans, to producers participating in the USDA Plan, including the cost of a criminal history report for three key participants, and to laboratories testing samples for THC content.

TABLE

Name	Form	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total reporting hours	Number of record keepers	Annual hours per record keeper	Total record keeping hours	Total hours	× \$57
<b>State and tribal forms</b>											
State and Tribal Hemp Producer Report (Old).	AMS-23	100	12.0000	1,200.00	0.3333	399.96	100	0.083	8.30	408.26	\$23,270.82
State and Tribal Hemp Producer Report (Update).	AMS-23	100	12.0000	1,200.00	1.0000	1,200.00	100	0.083	8.30	1,208.30	68,873.10
State and Tribal Producer Responses (Old).	information only	8,000	0.3330	2,664.00	0.1670	444.89	2,664.00	0.083	221.11	666.00	37,962.00
State and Tribal Producer Responses (Update).	information only	16,000	1.0000	16,000.00	0.3333	5,332.80	16,000	0.083	1,328.00	6,660.80	379,665.60
State and Tribal Hemp Disposal Report (Old).	AMS-24	100	12.0000	1,200.00	0.3333	399.96	100	0.083	8.30	408.26	23,270.82
State and Tribal Hemp Disposal Report (Update).	AMS-24	100	12.0000	1,200.00	1.0000	1,200.00	100	0.083	8.30	1,208.30	68,873.10
State and Tribal Producer Disposal Responses (20% then x 2 for 2 lots/producer) (Old).	information only	2,680	1.0000	2,680.00	0.1670	447.56	2,680	0.083	222.44	670.00	38,190.00
State and Tribal Producer Disposal Responses (25% of lot from 80% of producers) (Update).	information only	1,600	1.0000	1,600.00	0.1670	267.20	1,600	0.083	132.80	400.00	22,800.00
State and Tribal Hemp Annual Report (Old).	AMS-25	100	1.0000	100.00	0.3333	33.33	100	0.083	8.30	41.63	2,372.91
State and Tribal Hemp Annual Report (Update).	AMS-25	100	1.0000	100.00	1.0000	100.00	100	0.083	8.30	108.30	6,173.10
State and Tribal Hemp Annual Report (Old).	information only	6,700	1.0000	6,700.00	0.1670	1,118.90	6,700	0.083	556.10	1,675.00	95,475.00
State and Tribal Hemp Annual Report (Update).	information only	16,000	1.0000	16,000.00	0.1670	2,672.00	16,000	0.083	1,328.00	4,000.00	228,000.00
<b>USDA Producer Forms</b>											
USDA Hemp Plan Producer Licensing Application (Old).	AMS-26	1,000	0.3330	333.00	0.1670	55.61	333	0.083	27.64	83.25	4,745.25
USDA Hemp Plan Producer Licensing Application (Update).	AMS-26	4,000	0.3330	1,332.00	0.1670	222.44	4,000.00	0.083	332.00	554.44	31,603.31
USDA Hemp Plan Producer Disposal Form (20% x 2 lots for 2 lots/producer) (Old).	AMS-27	400	1.0000	400.00	0.3333	133.32	400	0.083	33.20	166.52	9,491.64
USDA Hemp Plan Producer Disposal Form (25% x lots from 20% of all producers) (Update).	AMS-27	400	1.0000	400.00	0.3333	133.32	400	0.083	33.20	166.52	9,491.64

TABLE—Continued

Name	Form	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total reporting hours	Number of record keepers	Annual hours per record keeper	Total record keeping hours	Total hours	× \$57
USDA Hemp Plan Producer Annual Report (Old).	AMS-28 .....	1,000	1.0000	1,000.00	0.3333	333.30	1,000	0.083	83.00	416.30	23,729.10
USDA Hemp Plan Producer Annual Report (Update).	AMS-28 .....	4,000	1.0000	4,000.00	0.3333	1,333.20	4,000	0.083	332.00	1,665.20	94,916.40
<b>All Producer Forms</b>											
Report of Acreage (Old).	FSA-578 .....	7,700	1.0000	7,700.00	0.5000	3,850.00	7,700	0.083	639.10	4,489.10	255,878.70
Report of Acreage (Update + 60 min travel time).	FSA-578 .....	20,000	1.0000	20,000.00	1.5000	30,000.00	20,000	0.083	1,660.00	31,660.00	1,804,620.00
Laboratory Test Results Report (2 lots/all producers) (Old).	AMS-22 .....	7,700	2.0000	15,400.00	0.5000	7,700.00	7,700	0.083	639.10	8,339.10	475,328.70
Laboratory Test Results Report (100% of CBD; 50% of fiber; 50% of grain) (Update).	AMS-22 .....	8,000	1.0000	8,000.00	0.5000	4,000.00	8,000	0.083	664.00	4,664.00	265,848.00
Total for Updates										52,295.86	2,980,864.25

Each column is a section of the burden estimate, with the cost of \$57 per hour calculated in the last column. Each row represents the old or the new reporting calculations.

## E-Government Act

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. We recognize using an electronic system will promote efficiencies in developing and implementing the new USDA Domestic Hemp Production Program. Since this is a new program, AMS is working to make this process as effective and user-friendly as possible.

## Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities who are subject to these regulations. This final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

This final rule reflects AMS's response to public comment and input provided by stakeholders. The final rule provides States and Indian Tribes the regulatory authority over hemp production in their jurisdictions. It also establishes a Federal plan for hemp producers located in States or territories of Indian Tribes that do not have their own USDA-approved hemp oversight plan. There is no evidence that the final rule will potentially adversely or disproportionality impact hemp producers in protected groups, regions or Indian Tribes differently than the general population of hemp producers or State Departments of Agriculture.

## Executive Order 13132—Federalism

AMS has examined the effects of provisions in this final rule on the relationship between the Federal Government and the States, as required by Executive Order 13132 on "Federalism." Our conclusion is that this rule does have federalism implications because the rule has substantial and direct effects on States, on the relationship between the National Government and States, and on the distribution of power and

responsibilities among the various levels of government. The federalism implications of the rule, however, flow from and are consistent with the underlying statute. Section 297B of the AMA, 7 U.S.C. 1639p, directs USDA to review and approve State plans that meet statutory requirements and to audit a State's compliance with its State plans. Overall, the final rule attempts to balance both the autonomy of the States with the necessity to create a Federal framework for the regulation of hemp production.

Section 3(b) of E.O. 13132 recognizes that national action limiting the policymaking discretion of States will be imposed ". . . only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance." Section 297B of the AMA is the statutory authority underlying the rules for USDA to review, approve, disapprove, or revoke State plans for hemp production. Until the passage of the 2018 Farm Bill, hemp was a Schedule I controlled substance as it fell within the CSA definition of marijuana. When hemp was exempted from the definition of marijuana as part of the 2018 Farm Bill, in connection with removing it from that list, Congress established a national regulatory framework for the production of hemp. Because cannabis plants with a THC level higher than 0.3 are marijuana and on the Federal controlled substances list, ensuring that hemp produced under this program is not marijuana is of national significance.

In addition to establishing a national regulatory framework for hemp production, Congress expressly preempted State law with regard to the interstate transportation of hemp. Section 10114 of the 2018 Farm Bill States that "[n]o State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable." Thus, States and Indian Tribes may not prevent the movement of hemp through their States or territories even if they prohibit its production. Congress also expressly preempted a State's ability to prosecute negligent violations of its plan as a criminal act in section 297B(e)(2)(c). That preemption is incorporated into this rule.

Section 3(d)(2) of the E.O. 13132 requires the Federal Government to defer to the States to establish standards where possible. Section 4(a), however,

expressly contemplates preemption when there is a conflict between exercising State and Federal authority under Federal statute. Section 297B of the AMA requires State plans to include six practice and procedures and a certification. It also expressly states that it does not preempt a State's ability to adopt more stringent requirements or to prohibit the production of hemp. Section 297D of the AMA requires USDA to promulgate regulations to implement subtitle G of the AMA, which includes section 297B. Subpart B of the final rule repeats those requirements, providing more detail where necessary. States have wide latitude to develop the required practice and procedures. Subpart B includes more details on the testing and sampling of hemp plants to establish a national standard to determine whether the plants meet the statutory definition of hemp. Likewise, the final rule requires States to follow DEA requirements for disposal of marijuana for cannabis plants exceeding the acceptable hemp THC level. Finally, the final rule also reaffirms that States may adopt more stringent standards and prohibit hemp production within their jurisdiction.

Section 6 of E.O. 13132 requires consultation with State officials in development of the regulations. AMS conducted significant outreach with State officials including individual meetings, participation in conferences with State officials, and listening sessions where State officials from all States were invited. During our consultation with the States, representatives from various State agencies and offices expressed the following concerns about sampling and testing procedures. Most requested that USDA adopt uniform, national requirements to facilitate the marketing of hemp. Some States advocated that USDA defer to each State to determine the appropriate procedures for its plan. USDA recognizes the value of a national standard to promote consistency while allowing States the flexibility to adopt procedures that fit their circumstances. As explained above, USDA is adopting performance standards for sampling and testing. As long as the procedures in the State plans meet those standards, AMS will find those procedures acceptable.

As AMS implements this new program, we will continue to consult with State officials to obtain their feedback on implementation.

Finally, we have considered the cost burden that this rule would impose on States as discussed in the Regulatory Impact Analysis of this document.

AMS has assessed this final rule in light of the principles, criteria, and

requirements in Executive Order 13132. We conclude that this final rule: Is not inconsistent with that E.O.; will not impose significant additional costs and burdens on the States; and will not affect the ability of the States to discharge traditional State governmental functions.

#### **Executive Order 13175 Consultation and Coordination With Indian Tribal Governments**

AMS examined the effects of provisions in the final rule on the relationship between the Federal Government and Tribal governments, as required by E.O. 13175 on "Consultation and Coordination with Indian Tribal Governments." We concluded that the final rule does have substantial direct effects on Tribal governments, on the relationship between the National Government and Tribal governments, and on the distribution of power and responsibilities among the various levels of government. The effects of the rule, however, flow from and are consistent with the underlying statute. Section 297B of the AMA, 7 U.S.C. 1639p, directs USDA to review and approve Tribal plans that meet statutory requirements and to audit a Tribal government's compliance with its Tribal plans. Overall, the final rule attempts to balance both the autonomy of the Tribal governments with the necessity to create a Federal framework for the regulation of hemp production.

As with States, Tribal governments will have wide latitude in adopting procedures including adopting requirements that are more stringent than the statutory ones. For reasons stated in the federalism analysis, AMS is adopting national standards for sampling, testing, and disposal of non-compliant plants that Tribal plans must also incorporate.

AMS conducted extensive outreach to Tribal governments through individual discussions with Tribal representatives, by extending the regulatory comment periods and through the following more formal consultations.

*Tribal Consultation May 2019:* On May 1 and 2, 2019, USDA held a formal Tribal consultation on the 2018 Farm Bill including a session on hemp production. This consultation occurred at the National Museum of the American Indian located in Washington DC. In addition to listening sessions for the general public, USDA hosted a listening session for Tribal governments following the formal Tribal consultation on May 2, 2019. USDA officials attended meetings with representatives of Tribal governments. On December 11,

2019, roughly 41 days after the publication of the domestic hemp production program interim final rule, USDA held a second formal Tribal consultation. This consultation provided information on the interim final rule. This consultation occurred in Las Vegas, Nevada, and attendees included USDA officials, Tribal leaders, Tribal proxies, non-consulting Tribal members, non-profit representatives, businesses, law firms, private individuals, and other government employees. On September 24, 2020, USDA held a third formal Tribal consultation and provided information on the interim final rule. This consultation occurred virtually and attendees included USDA officials, Tribal leaders, Tribal proxies, non-consulting Tribal members, non-profits representatives, Businesses, law firms, private individuals, and other government employees.

During the May 2019 consultation, Tribal representatives from several Tribal Governments expressed their opinions that the 2018 Farm Bill permitted the USDA Secretary to allow AMS to approve Tribal plans ahead of issuing regulations of the USDA plan. Indian Tribes stated that approving hemp plans immediately would allow those Indian Tribes (and States) with a plan to begin planting for the commercial production of hemp in 2019. The USDA Secretary released a Notice to Trade (NTT) on February 27, 2019, to explain that Tribal and State plans would not be reviewed or approved until AMS finalized regulations ahead of the 2020 planting season. Additionally, the NTT stated that until regulations were in place, States, Indian Tribes, and institutions of higher education could continue operating under authorities of the 2014 Farm Bill. The 2018 Farm Bill extension of the 2014 authority expired 12 months after USDA had established the plan and regulations required under the 2018 Farm Bill. Congress extended this expiration until January 1, 2022. After the May Tribal consultation, USDA issued a second NTT on May 27, 2019, to clarify that Tribal governments through the authorities in the 2014 Farm Bill are permitted to grow industrial hemp for research purposes during the 2019 growing season. USDA appreciates the urgency in which the Indian Tribes wish to engage in this new economic opportunity. We worked expeditiously to develop and promulgate the IFR so that States and Indian Tribes could submit their plans in time for the 2020 season.

*Tribal Consultation December 2019:* During this consultation Indian Tribes

expressed how some provisions of the interim final rule are too rigid and that USDA did not consider practical problems and potential economic harm faced by Indian Tribes under the program.

Indian Tribes requested more extensive Tribal consultation and the inclusion of other agencies involved in hemp production and enforcement. In response, USDA extended the public comment date by thirty additional days to January 29, 2020 and agreed to conduct an additional consultation after the first growing season. AMS also reopened the public comment period for thirty days in the Fall of 2020.

*Tribal Consultation September 2020:* Consultation also occurred on September 24, 2020.

Based on the comments and consultations received, we made changes to the final regulations. Although Indian Tribes will still incur costs in complying with final rule, those costs should be outweighed by the benefits that the Indian Tribes realize in commercial hemp production occurring within their territories.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined, in agreement with AMS, that this rule has substantial direct tribal implications that require continued outreach efforts to determine if tribal consultation under E.O. 13175 is required. Based on AMS outreach efforts to date, OTR does not believe that tribal consultation is necessary at this time. If a tribe requests consultation AMS will work with the OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

**Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives when an action is deemed to have significant impacts. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity. This rule meets the definition of an economically significant regulatory action under Executive Order 12866, as it is likely to result in an annual effect on the economy of \$100 million or more. USDA considers this to be a deregulatory action as it allows the development of a niche market that cannot exist under the state pilot programs authorized under the Agricultural Act of 2014 (2014 Farm Bill). This action finalizes the interim final rule published on October 31, 2019, that expanded production options and enabled interested farmers to grow hemp.

Executive Order 13771 mandates that agencies provide the best approximation of total costs associated with a new or repealed regulation. AMS has prepared this Regulatory Impact Analysis with the purpose of accomplishing these objectives. USDA considers this to be a deregulatory action under Executive Order 13771 as it allows for the development of a niche market that cannot exist under current regulation. This rule removes barriers to entry and enables domestic farmers to grow hemp.

**Regulatory Impact Analysis**

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This rule finalizes and updates the interim final rule that established a national regulatory oversight program for the production of hemp. This program is necessary to effectuate the mandate in the Agriculture Improvement Act of 2018, known as the 2018 Farm Bill, to coordinate State and Tribal government hemp production regulations with the newly established federal regulations for hemp production

in States and Indian Tribes not regulated by State or Tribal plans. This program is intended to provide consistency in production, sampling and testing of hemp product to ensure compliance with the acceptable hemp THC level.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. The discussions on Executive Orders 13132 (Federalism) and 13179 (Consultation and Coordination with Tribal Governments), above, address the extent to which the rule preempts State law, and the impacts of the rule to Tribal governments. The discussion above regarding appeals under new part 990, subpart D, describes the administrative procedures that must be exhausted prior to a judicial challenge.

**Introduction**

On October 31, 2019, USDA promulgated an interim final rule establishing a national program for the production of industrial hemp. A regulatory analysis was performed in support of that regulation and published as part of the preamble to that rule. This analysis is intended to update the previous analysis to reflect additional information gained through the first year of operation of that program and to assess whether any of the modifications to the program made in response to public comment have significant impacts on the estimated costs or benefits of the final program.

In the IFR, AMS estimated lower and upper bounds to calculate the total net benefits of the rule to society at large. These net benefits were calculated for 2020 through 2022 only due to lack of data for future years. In the IFR, 2020 estimated net benefits ranged from a loss of nearly \$4 million to a gain of \$17.6 million; for 2021, a net benefit of \$23 million to \$46 million; and, for 2022, a net benefit of nearly \$49 million to \$74 million. In this final rule, the estimated net benefits, as shown in Table 12, are \$46 million in 2020; \$87 million in 2021; \$135 million in 2022; \$190 million in 2023; \$226 million in 2024; and, \$351 million in 2025.

The estimates of net benefits resulting from this final rule differ from those in the IFR due to a variety of factors. First of these is the large increase in planted acreage and market entrants in 2019, the scale of which was unexpected. (There may be other unexpected changes due to the pandemic, but we cannot estimate those at this time.) Changes in other variables, as well, contributed to the increase in net benefits in the final rule over the IFR. A comparison of the variables that are assumed constant (across years 2020 through 2025) in the IFR and the final rule is shown in Table 1 below. In the year between publication of the IFR and this final rule, additional information regarding the hemp industry has emerged to the benefit of this analysis. AMS believes that the modifications to the analysis from the IFR to the final rule represent the state of the hemp industry to the greatest extent practicable. The modifications in this final rule are intended to further support the hemp marketplace and provide the greatest flexibility possible while still ensuring the program complies with the 2018 Farm Bill.

AMS suspects that this rule, compared to the IFR, will incentivize participation in the market and allow for more farmers to be successful. In particular, AMS attributes this to two policies. First, AMS anticipates that the flexibilities in disposal and remediation of non-compliant hemp will help minimize the risk to farmers, therefore increasing participation in the industry. Second, AMS anticipates that the increased threshold for negligent hemp (from 0.5 percent to 1.0 percent) will also reduce risk to farmers and allow for more innovation.

AMS received numerous comments providing data on the different aspects of the hemp industry, that while informative, could not be incorporated in the RIA due to such factors as they were too regionally focused, small in sample size, or lacked the depth of data points to be representative of the national hemp market. An example of this is the portion of retests performed on hemp samples that initially tested higher than 0.3 percent THC.

Variables	Intended Use	IFR		Final Rule	Final Rule Data Sources
		Low	High		
Price per lb	Cannabinoids	\$ 3.50	\$ 30.00	\$ 3.90	The Jacobsen.
	Fiber	\$ 0.07	\$ 0.67	\$ 0.09	Estimates based on 2019 and 2020 prices.
	Grain	\$ 0.65	\$ 1.70	\$ 0.53	
Yield per acre	Cannabinoids	1,000	1,200	1,500	Hemp enterprise budgets from seven universities.
	Fiber	2,000	11,000	8,000	
	Grain	800	1,600	1,200	
Portions of planted acreage by intended use	Cannabinoids	67%		80%	The Jacobsen. Hemp Daily Bulletin, September 8, 2020.
	Fiber	17%		3%	
	Grain	17%		17%	
Variables	Plans	IFR		Final Rule	Final Rule Data Sources
		Low	High		
Portions of lots sampled & tested	USDA	100%		Based on 95% CI and 1% margin of error	Standard statistical performance objective.
	State/Tribal	100%			
Sampling & testing cost	USDA (per lot)	\$ 599	\$ 830	\$ 565	State departments of agriculture.
	State/Tribal (per license)	Included in program administration cost			
Variables		IFR		Final Rule	Final Rule Data Sources
Portion of sales attributable to the rule		50% of growth		20% of total	State depts. of ag.
Opportunity cost per acre		\$ 591		\$ 630	NASS.
Program administration cost		\$ 1,000		\$ 800	State depts. of ag.
Portion of lots testing > 0.3% THC		40%		25%	National Industrial Hemp Regulators.
Disposal cost per acre		\$ 200		\$ 14.25	State depts. of ag.

The 2014 Farm Bill defined hemp as the plant *Cannabis sativa* L. and any part of that plant with concentrations of THC no greater than 0.3 percent on a dry weight basis. While belonging to the same species as the plant that produces marijuana, hemp is distinctive from marijuana in its chemical makeup. The marijuana plant contains high levels of the cannabinoid delta-9 tetrahydrocannabinol (THC), which is the chemical that produces psychoactive effects. Hemp may contain no greater than 0.3 percent THC on a dry weight basis.

Prior to the 2014 Farm Bill, hemp had never been designated in a Federal law as different from cannabis generally. The first regulation of hemp occurred in 1937 with the Marihuana Tax Act, which required all producers of the species *Cannabis sativa* to register with and apply for a license from the Federal government. The "Hemp for Victory" Campaign during World War II promoted production of hemp for rope to be used by U.S. military forces. At the end of the war, however, the requirements in the Marihuana Tax Act

resumed. In 1970, Congress passed the Controlled Substances Act, granting the Attorney General the authority to regulate production of cannabis, including hemp.

The 2014 Farm Bill authorized pilot programs, as permitted by State law, for hemp cultivation for research purposes to be administered by academic institutions and State departments of agriculture. By 2019 approximately half of the states had developed such a pilot program. The research under these pilot programs included market research, which allowed cultivated hemp to enter the stream of commerce as inputs into various consumer products. For example, in Kentucky, one of the first states to enact a pilot program, producer sales to processors totaled \$1.6 million in 2016, \$7.5 million in 2017, \$17.7 million in 2018, and \$51.3 million in 2019.<sup>33</sup> Hemp biomass contains concentrations of the cannabinoid cannabidiol, known as CBD. High prices for hemp harvested for cannabinoids, relative to those of other agricultural

commodities, have fueled producer interest in hemp production since 2014. *2018 Farm Bill*

The 2018 Farm Bill allowed the production and sale of industrial hemp either under a State or Tribal program approved by the USDA or under a Federal license for producers in areas with no approved plan and no explicit State or Tribal statute prohibiting the production of hemp. The 2018 Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act). Accordingly, products containing cannabis and cannabis-derived compounds are subject to the same authorities and requirements as FDA-regulated products containing any other substance. The 2018 Farm Bill removed hemp from the list of controlled substances, decontrolling hemp production in all U.S. States, territories, and lands belonging to Indian Tribes, unless prohibited by State or Tribal

<sup>33</sup> Kentucky Department of Agriculture.

Law. This action eliminates the uncertain legal status at the Federal level of hemp production and allows the U.S. Department of Agriculture (USDA) to provide hemp producers with crop insurance programs, potentially reducing risk to producers and providing easier access to capital. The statute also prohibits interference in the interstate transport of hemp by States, including those States that prohibit hemp production and sales. As a result, hemp producers will have access to nationwide markets.

#### *Need for Regulation*

The rule is necessary to facilitate the domestic cultivation of hemp for sale into the market for hemp products by creating a set of minimum standards to ensure that hemp being produced under this program meets all statutory requirements. The rule establishes minimum requirements for States and Indian Tribes to obtain program approval and, for producers operating under the Federal program to obtain a license and meet operating requirements under that license. Without these provisions, it would not be possible to grow hemp legally.

Both the declassification of hemp, and the prohibition on interference with interstate transportation apply to hemp that is grown under an approved State or Tribal plan, or under a Federal license. As a result, this regulation facilitates provisions of the 2018 Farm Bill that would otherwise be self-implementing.

#### *Overview of the Action*

The 2018 Farm Bill granted regulatory authority of domestic hemp production to the State departments of agriculture, Tribal governments, and USDA. States and Indian Tribes wishing to operate their own programs must submit to USDA plans that include provisions for maintaining information regarding the land on which hemp is produced, for testing the levels of THC, for disposal of plants that do not meet necessary requirements, and for procedures to ensure compliance with the requirements of the new part, including background checks of all key participants. State and Tribal Plans must be approved by USDA. This rule outlines requirements by which the USDA would approve plans submitted by States and Tribal governments for oversight of hemp production. The 2018 Farm Bill also directs USDA to develop a plan for use by hemp producers in

States or Indian Tribes where no State or Tribal Plan has been approved and that do not prohibit the cultivation of hemp. These actions will promote consistency in regulations governing the legal production of hemp across the country.

#### *Baseline Definition*

The 2014 Farm Bill authorized hemp research pilot programs to be administered by states and universities. The 2018 Farm Bill repealed these pilot programs beginning one year from the publication of a USDA rule; however, the 2021 Continuing Appropriations Act extended the authorization of the 2014 pilot programs until January 1, 2022. From 2014 to 2018, planted acreage tripled in every year, reaching nearly 63,500 acres in 2018. In the year following the signing of the 2018 Farm Bill, planted acreage increased by more than 400 percent to 327,600 acres in 2019.<sup>34</sup> The surge of entrants into the hemp market in 2019 left many producers with unsold inventory. In Kentucky alone, more than \$100 million of hemp material went unsold due to lack of buyers in 2019. The large number of entrants into the market in 2019 caused a surplus of hemp production, which in turn caused prices to fall and revenue losses to producers.

Despite the producer excitement that ensued in 2019 following the signing of the 2018 Farm Bill, only 17 states opted to participate in the new hemp programs in time for the 2020 growing season. These 17 states accounted for about 20 percent of the total estimated planted acreage in 2020. Given the apparent affinity by states for the 2014 pilot programs, AMS assumes that in the absence of the 2018 Farm Bill, the 2014 Farm Bill pilot programs would have continued indefinitely. Indeed, the 2014 Farm Bill offered no sunset date for these programs. In order to capture the impacts of this rule on affected entities, AMS attributes 20 percent of the estimated planted acreage from 2020 through 2025 to the 2018 Farm Bill and this rule which enables its prescriptions. This 20 percent reflects the amount of planted acreage in the 17 states that opted to participate in the 2018 Farm Bill hemp programs for the 2020 growing season. The 2020 growing season was the final opportunity for producers to cultivate hemp under the 2014 pilot programs until the 2021 Continuing Appropriations Act extended the authorization of the 2014 pilot programs to January 1, 2022. By

enrolling in the new hemp programs, these 17 states expressed a preference for the hemp programs authorized by the 2018 Farm Bill over the 2014 Farm Bill pilot programs. The remaining 80 percent of planted acreage estimated from 2020 through 2025 will be treated as attributable to the 2014 pilot programs under the assumption that they would have continued in the absence of the 2018 Farm Bill which terminated them.

In the interim final rule (IFR), AMS attributed 50 percent of the growth in producer sales from 2020 through 2022 to the 2018 Farm Bill and this enabling rule. In deriving this assumption, AMS considered the rate at which hemp acreage had increased in recent years, the number of States whose hemp pilot programs produced a crop in recent years, and the number of States that passed legislation following the signing of the 2018 Farm Bill in anticipation of this rule's enactment in time for the 2020 growing season. In the time between publication of the IFR on October 31, 2019, and the beginning of the 2020 growing season, 17 states representing 20 percent of planted acreage opted to participate in the hemp programs mandated by the 2018 Farm Bill. This portion of enrollment is less than AMS anticipated in the IFR.

#### *Affected Entities*

As of July 2020, States, Indian Tribes, and USDA had issued 19,121 producer licenses. This figure represents licenses issued in 44 States and one Tribe. About 70 percent of states reported at the time that they were still accepting applications, which indicates that the number of 2020 producer licenses issued is likely to grow. For this reason, AMS estimates that up to 20,000 producer licenses will be issued in 2020. Based on the slowed pace in growth of producer licenses from 2019 to 2020, AMS assumes an annual growth rate in producer licenses of 10 percent from 2020 through 2025, for the purposes of this analysis. The result is shown in Table 2. AMS is unaware of any estimates that exist regarding the number of producer licenses that will be issued in the coming years; however, the novelty of hemp as a commercial agricultural commodity, the resolutions of uncertainty surrounding regulations, the expected growth in demand for existing and new hemp products, and the effective establishments of State, Tribal, and Federal hemp programs may

<sup>34</sup> Sources include the following: State Departments of Agriculture; Vote Hemp. 2016–2019 Crop Reports; and, Mark, Tyler, Jonathan Shepherd,

David Olson, William Snell, Susan Proper, and Suzanne Thornsbury. February 2020. Economic Viability of Industrial Hemp in the United States:

A Review of State Pilot Programs, EIB–217, U.S. Department of Agriculture, Economic Research Service.

continue to draw producers into the market.

TABLE 2—ESTIMATED PROJECTION OF NUMBER OF PRODUCER LICENSES ISSUED

Year	2020	2021	2022	2023	2024	2025
Growers .....	20,000	22,000	24,200	26,620	29,282	32,210

Sources and notes:  
 2020 figure based on July 2020 National Industrial Hemp Regulators conference call.  
 2021–2025 figures based on assumed annual growth rate of 10% in producer licenses.

As of the writing of this analysis, three states had opted to participate in the USDA Federal Plan authorizing producers to cultivate hemp. These states are Hawaii, Mississippi, and New Hampshire. Together, they represent more than 300 producers in 2020. The number of licensed producers participating in the Federal Plan is likely to grow over time due to both greater entrance of producers into the market in these three states and additional states, Indian Tribes, and territories opting to participate in the USDA Plan. At the end of 2020, less than 2 percent of the total number of producers were licensed by USDA. The extension of the 2014 pilot programs to 2022, which was included in the 2021 Continuing Appropriations Act published October 1, 2020, resulted in fewer producers participating in the USDA Plan. Prior to the extension of the 2014 pilot programs, the portion of participants under the USDA Plan was about 10 percent of the total number of 2020 producers, with the expectation for further enrollment. For the purposes of this analysis, therefore, AMS assumes that 20 percent of the total number of licensed producers will be participants of the USDA Plan, and the remaining 80 percent will be participants of a State or Tribal Plan.

In addition to hemp producers, this rule will impact state departments of agriculture, Tribal governments, and USDA as these entities will bear the responsibility to ensure that hemp producers abide by the State and Tribal Plans and the USDA Plan for regulating hemp. At the time this document was written, more than 40 Indian Tribes, at least 40 states, and two U.S. territories had plans approved by USDA or were

in the process of submitting plans for USDA approval. At least three states have opted to participate in the USDA plan, and one state and one territory await legislation authorizing hemp production. AMS anticipates receiving further interest in both the Federal Plan and the plans administered by states, Indian Tribes, and territories in the coming months when the provisions of the 2014 Farm Bill expire and States and Tribes start implementing their programs. For the purposes of this analysis, AMS assumes that 100 states, Indian Tribes, and territories will administer their own plans in every year from 2020 through 2025. AMS acknowledges that this number is likely to change from year to year, depending on market conditions, which affect the ability of a state, tribe, or territory to manage its own hemp program. Because AMS has no way to predict future market or state political conditions, for simplicity, it assumes a constant of 100 states, Indian Tribes, and territories administering their own plans from 2020 through 2025.

Finally, this rule will impact laboratories that will provide testing services to producers and program administrators. As of the writing of this analysis, there were 67 laboratories that test hemp that are registered with the DEA. USDA is requiring that all samples tested for THC concentration levels be conducted in DEA-registered laboratories; however, enforcement of this requirement has been delayed until December 31, 2022.

*Expected Costs and Benefits of the Rule*

The 2018 Farm Bill grants authorization for production of hemp to all states and Indian Tribes, unless prohibited by State or Tribal Law. This

rule enables states, Indian Tribes, and USDA to regulate this authorization. This rule is expected to generate benefits and costs to hemp producers, state departments of agriculture, Tribal governments, USDA, and laboratories. The benefits of this rule are expected to outweigh the costs, however, and the burden on the impacted entities is anticipated to be minimal.

*Producers*

Using figures from Hemp Industry Daily and the Brightfield Group, AMS estimates retailer sales of hemp products to range from \$2.5 billion in 2020 to nearly \$17 billion in 2025. Based on price spreads from farm to consumer, published by the Economic Research Service (ERS), AMS assumes a pass-through rate of 20 percent from retailer to producer.<sup>35</sup> AMS also assumes that import values account for 15 percent of the producer share of retail sales. This estimate was derived using 2019 and 2020 import data from the Foreign Agricultural Service (FAS) of USDA. At the time of this analysis, import data for 2020 was only available for the months of January through August. In order to gauge what total 2020 imports might be, AMS applied to the figure of total imports for January through August 2020 (\$55 million) the average percentage change that occurred in the four months from August through December of recent years (40 percent). Applying the assumptions of 20 percent price pass-through from retailer to producer and import values of 15 percent of the producer share of retail sales to the estimates of retailer sales results in estimated total producer sales of \$432 million in 2020 to \$2.9 billion in 2025, shown in Table 3.

TABLE 3—ESTIMATED RETAILER AND PRODUCER HEMP PRODUCT SALES  
 [Millions]

Year	2020	2021	2022	2023	2024	2025
Total retailer sales <sup>1</sup> .....	\$2,540	\$4,485	\$6,740	\$9,310	\$10,995	\$16,800

<sup>35</sup> ERS. Price Spreads from Farm to Consumer. September 2020.

TABLE 3—ESTIMATED RETAILER AND PRODUCER HEMP PRODUCT SALES—Continued  
[Millions]

Year	2020	2021	2022	2023	2024	2025
Producer share of retail sales <sup>2</sup> .....	508	897	1,348	1,862	2,199	3,360
Imports <sup>3</sup> .....	76	135	202	279	330	504
Total producer sales <sup>4</sup> .....	432	762	1,146	1,583	1,869	2,856

<sup>1</sup> Retailer sales estimates based on the following stores: 2020–2024 estimates from Hemp & CBD Industry Facebook 2019, Hemp Industry Daily, “Annual U.S. Hemp-Derived CBD Retail Sales Estimates.” Published October 16, 2019. 2025 estimate from Brightfield Group. “US CBD Market Forecast Reduced Due to Health Consolidation.” Published July 31, 2020.

<sup>2</sup> Product of total retailer sales and 20% share of retail sales passed to producers; estimate of 20% share of retailer prices based on Economic Research Service publications of “Price Spreads from Farm to Consumer”.

<sup>3</sup> Assumes imports account for 15% sales at the producer level; source for assumption is FAS 2015–2019 import data, HTS codes 1207990320 and 5302100000.

<sup>4</sup> Difference of producer share of retail sales and imports.

The estimates in Table 3 reflect total producer sales in aggregate. AMS is unaware of any data that currently exists that would indicate sales by individual producer. Given the varied nature of the hemp industry, producer sizes are anything but uniform; therefore, AMS has not attempted to project sales by individual producer as it would likely result in false conclusions and misleading information. Similarly, data comparing sales by producers under the 2018 Farm Bill and what sales under the 2014 Farm Bill may have been in the absence of the 2018 Farm Bill does not currently exist. Further, AMS believes that this estimate would not differ greatly given the greater access to nationwide markets and flexibilities provided to producers under the 2018 Farm Bill.

In addition, AMS acknowledges that raw harvested hemp product may take years to enter the retail market after it passes through the supply chain. For instance, product sold at the retail level in 2021 may include hemp that was harvested in 2019. In acknowledging

this, AMS understands that the estimated producer sales for a given year in Table 3 may not represent actual producer sales for that year, but rather, sales from prior years. AMS is unaware of any data that exists that would identify when a harvested hemp crop is sold into the retail market. For the purposes of this analysis, therefore, and for simplicity, AMS assumes that the producer sales estimated in Table 2 represent sales at the producer level for the same year as the retail sales from which they are derived.

As discussed in the “Baseline Definition” section of this analysis, AMS estimates that 20 percent of the producer planted acreage from 2020 through 2025 will be attributable to the 2018 Farm Bill and this rule which enables its prescriptions. This 20 percent reflects the amount of planted acreage in the 17 states that opted to participate in the 2018 Farm Bill hemp programs in time for the 2020 growing season. The 2020 growing season was the final opportunity for producers to cultivate hemp under the 2014 pilot

programs. By enrolling in the new hemp programs, these 17 states expressed a preference for the hemp programs authorized by the 2018 Farm Bill over the 2014 Farm Bill pilot programs. The remaining 80 percent of producer planted acreage estimated from 2020 through 2025 will be treated as attributable to the 2014 pilot programs under the assumption that they would have continued in the absence of the 2018 Farm Bill which terminated them. In Table 4, AMS has calculated total planted acreage inclusive of all domestic producers, using the estimates of total producer sales in Table 3 and assumptions that are stated and cited in the table. From the estimates of total planted acreage in Table 4, AMS calculated the planted acreage due to the rule in Table 5, along with the estimate of sales attributable to the rule. These estimates of sales due to the rule will be referenced as the benefits of the rule to producers in the calculation of net benefits in Table 10.

**BILLING CODE P**

Table 4. Calculation of planted acreage required to meet estimated total producer sales								
Assumed constant in each year								
Intended use	Portion of total sales <sup>1</sup>	Yield (lbs/acre) <sup>2</sup>	Price per lb <sup>3</sup>	Price per acre <sup>4</sup>	Portion of harvested volume sold <sup>5</sup>	Portion of planted acreage harvested <sup>6</sup>		
Cannabinoids	99%	1,500	\$ 3.90	\$ 5,850	65%	75%		
Fiber	0.5%	8,000	\$ 0.09	\$ 720	90%			
Grain	0.5%	1,200	\$ 0.53	\$ 636	95%			
Year	Total producer sales (millions) <sup>7</sup>	Intended use	Sales by use (millions) <sup>8</sup>	Acres-worth sold <sup>9</sup>	Volume sold (lbs) <sup>10</sup>	Volume harvested (lbs) <sup>11</sup>	Harvested acreage <sup>12</sup>	Planted acreage <sup>13</sup>
2020	\$ 432	Cannabinoids	\$ 427	73,074	109,610,769	168,631,953	112,421	159,102
		Fiber	\$ 2	2,999	23,988,889	26,654,321	3,332	
		Grain	\$ 2	3,395	4,073,585	4,287,984	3,573	
2021	\$ 762	Cannabinoids	\$ 755	129,030	193,545,000	297,761,538	198,508	280,934
		Fiber	\$ 4	5,295	42,358,333	47,064,815	5,883	
		Grain	\$ 4	5,994	7,192,925	7,571,500	6,310	
2022	\$ 1,146	Cannabinoids	\$ 1,134	193,905	290,856,923	447,472,189	298,315	422,184
		Fiber	\$ 6	7,957	63,655,556	70,728,395	8,841	
		Grain	\$ 6	9,008	10,809,434	11,378,352	9,482	
2023	\$ 1,583	Cannabinoids	\$ 1,567	267,842	401,762,308	618,095,858	412,064	583,165
		Fiber	\$ 8	10,991	87,927,778	97,697,531	12,212	
		Grain	\$ 8	12,443	14,931,132	15,716,981	13,097	
2024	\$ 1,869	Cannabinoids	\$ 1,850	316,318	474,476,538	729,963,905	486,643	688,711
		Fiber	\$ 9	12,980	103,841,667	115,379,630	14,422	
		Grain	\$ 9	14,695	17,633,491	18,561,569	15,468	
2025	\$ 2,856	Cannabinoids	\$ 2,827	483,323	724,984,615	1,115,360,947	743,574	1,052,327
		Fiber	\$ 14	19,833	158,666,667	176,296,296	22,037	
		Grain	\$ 14	22,453	26,943,396	28,361,470	23,635	

Sources and notes:  
<sup>1</sup> Kentucky Department of Agriculture 2019 producer data.  
<sup>2</sup> Hemp Enterprise Budgets from University of Kentucky, University of Tennessee, University of Georgia, North Dakota State University, Alabama A&M and Auburn Universities, Cornell University, and Penn State University.  
<sup>3</sup> The Jacobsen. Estimates based on 2019 and 2020 prices; for biomass, CBD% assumed to be 6%.  
<sup>4</sup> Product of yield and price per lb.  
<sup>5</sup> Kentucky Department of Agriculture 2019 producer data.  
<sup>6</sup> State departments of agriculture.  
<sup>7</sup> See Table 3.  
<sup>8</sup> Product of total producer sales and portions of total sales.  
<sup>9</sup> Quotient of sales by use and price per acre.  
<sup>10</sup> Product of yield and acres-worth sold.  
<sup>11</sup> Quotient of volume sold and portion of harvested volume sold.  
<sup>12</sup> Quotient of harvested volume and yield.  
<sup>13</sup> Quotient of the sum of harvested acreage and portion of planted acreage harvested.

**BILLING CODE C**

To calculate total planted acreage nationwide in Table 4, from which planted acreage due to this rule will be estimated in Table 5, AMS assumed the following to remain constant in each year from 2020 through 2025: Portion of total sales by intended use; yields by intended use; prices per pound by intended use; portions of harvested volume sold by intended use; and the portion of planted acreage that is

typically harvested. Using 2019 producer data from the Kentucky Department of Agriculture, AMS estimates that of total sales of hemp products, cannabinoids accounts for 99 percent, and fiber and grain each account for 0.5 percent. Also based on data from the Kentucky Department of Agriculture, AMS estimates that 65 percent of the harvested volume of hemp for cannabinoids is sold, 90 percent of hemp harvested for fiber is

sold, and 95 percent of hemp harvested for grain is sold.<sup>36</sup> This assumption is also referenced in Table 5. AMS compared the hemp enterprise budgets published by seven different academic institutions for yield estimates which

<sup>36</sup> The Kentucky Department of Agriculture is widely recognized as a reliable source for hemp market data as it has collected data from its producers since the inception of its hemp program in 2014. Much of this data is publicly available and was cited by many commenters.

represent the growing conditions across the country. Aside from these seven, AMS is unaware of any other hemp enterprise budgets published by an academic institution.

Based on 2019 and 2020 prices published by the Jacobsen, AMS assumes constant per-pound prices for cannabinoids, fiber, and grain of \$3.90, \$0.09, and \$0.53, respectively.<sup>37</sup> AMS acknowledges that prices are unlikely to

remain constant from year to year, particularly for cannabinoids; however, AMS has considered 68 weeks of cannabinoids prices in determining its estimate of \$3.90 per pound. This price assumes 6 percent CBD at \$0.65 per CBD percentage per pound. Using these prices and yield estimates, AMS calculated a price per acre for each intended use of hemp. Finally, the assumption that 75 percent of planted

acreage is harvested was estimated using data from multiple state departments of agriculture. The assumed constants of the portion of planted acreage that is harvested, yield by intended use, portion of harvested volume that is sold, and prices by intended use are also utilized in Table 5.

Table 5. Calculation of producer sales attributable to the rule

Assumed constant in each year									
Intended use	Portion of planted acreage due to the rule <sup>1</sup>	Portion of planted acreage <sup>2</sup>	Portion of planted acreage harvested <sup>3</sup>	Yield (lbs/acre) <sup>4</sup>	Portion of harvested volume sold <sup>5</sup>	Price per lb <sup>6</sup>			
Cannabinoids	20%	80%	75%	1,500	65%	\$ 3.90			
Fiber		3%		8,000	90%	\$ 0.09			
Grain		17%		1,200	95%	\$ 0.53			
Year	Total planted acreage <sup>7</sup>	Planted acreage due to rule <sup>8</sup>	Intended use	Planted acreage due to rule by use <sup>9</sup>	Harvested acreage due to rule <sup>10</sup>	Volume harvested due to rule <sup>11</sup>	Volume sold due to rule <sup>12</sup>	Sales by use due to rule (millions) <sup>13</sup>	Total sales due to rule (millions) <sup>14</sup>
2020	159,102	31,820	Cannabinoids	25,456	19,092	28,638,339	18,614,920	\$ 72.6	\$ 76
			Fiber	955	716	5,727,668	5,154,901	\$ 0.5	
			Grain	5,409	4,057	4,868,518	4,625,092	\$ 2.5	
2021	280,934	56,187	Cannabinoids	44,949	33,712	50,568,090	32,869,259	\$ 128.2	\$ 133
			Fiber	1,686	1,264	10,113,618	9,102,256	\$ 0.8	
			Grain	9,552	7,164	8,596,575	8,166,747	\$ 4.3	
2022	422,184	84,437	Cannabinoids	67,549	50,662	75,993,072	49,395,497	\$ 192.6	\$ 200
			Fiber	2,533	1,900	15,198,614	13,678,753	\$ 1.2	
			Grain	14,354	10,766	12,918,822	12,272,881	\$ 6.5	
2023	583,165	116,633	Cannabinoids	93,306	69,980	104,969,659	68,230,279	\$ 266.1	\$ 277
			Fiber	3,499	2,624	20,993,932	18,894,539	\$ 1.7	
			Grain	19,828	14,871	17,844,842	16,952,600	\$ 9.0	
2024	688,711	137,742	Cannabinoids	110,194	82,645	123,967,928	80,579,153	\$ 314.3	\$ 327
			Fiber	4,132	3,099	24,793,586	22,314,227	\$ 2.0	
			Grain	23,416	17,562	21,074,548	20,020,820	\$ 10.6	
2025	1,052,327	210,465	Cannabinoids	168,372	126,279	189,418,934	123,122,307	\$ 480.2	\$ 499
			Fiber	6,314	4,735	37,883,787	34,095,408	\$ 3.1	
			Grain	35,779	26,834	32,201,219	30,591,158	\$ 16.2	

Sources and notes:  
<sup>1</sup> Portion of planted acreage in states which had plans approved by USDA for a hemp production program to begin in time for the 2020 growing season; planted acreage data from state departments of agriculture.  
<sup>2</sup> The Jacobsen. Hemp Daily Bulletin, September 8, 2020. Estimated US Hemp Acreage 2020.  
<sup>3</sup> State departments of agriculture.  
<sup>4</sup> Hemp Enterprise Budgets from University of Kentucky, University of Tennessee, University of Georgia, North Dakota State University, Alabama A&M and Auburn Universities, Cornell University, and Penn State University.  
<sup>5</sup> Kentucky Department of Agriculture 2019 producer data.  
<sup>6</sup> The Jacobsen. Estimates based on 2019 and 2020 prices; for biomass, CBD% assumed to be 6%.  
<sup>7</sup> See Table 4.  
<sup>8</sup> Product of total planted acreage and portion of planted acreage due to rule.  
<sup>9</sup> Product of planted acreage due to rule and portion of planted acreage by use.  
<sup>10</sup> Product of planted acreage due to rule by use and portion of planted acreage harvested.  
<sup>11</sup> Product of harvested acreage due to rule and yield.  
<sup>12</sup> Product of volume harvested due to rule and portion of harvested volume sold.  
<sup>13</sup> Product of volume sold due to rule and price per lb.  
<sup>14</sup> Sum of sales by use due to rule.

<sup>37</sup> The Jacobsen Publishing Company. Weekly hemp prices from July 2019 through August 2020.

In addition to the assumptions already identified in reference to Table 4, AMS assumes constant the portion of planted acreage due to the rule and portions of planted acreage by intended use. As described in the “Baseline Definition” section, AMS assumes that 20 percent of total planted acreage can be considered as attributable to the rule. This proportion represents the amount of planted acreage of the states that had plans approved by USDA for a hemp production program, as authorized by the 2018 Farm Bill, in time for the 2020 growing season. The 2020 growing season was the final opportunity for producers to cultivate hemp under the 2014 pilot programs. By enrolling in the new hemp programs, these states expressed a preference for the hemp programs authorized by the 2018 Farm Bill over the 2014 Farm Bill pilot programs.

The Jacobsen estimated that of total planted acreage in 2020, 80 percent was for cannabinoids, 3 percent was for fiber, and 17 percent was for grain. AMS acknowledges that planted acreage by

intended use is likely to change from year to year as a result of market conditions. The portion of acreage intended for cannabinoids has, indeed, decreased from its levels in 2019, with grain and fiber gaining greater consumer attention. AMS is unaware of any data that forecasts planted acreage by intended use in years beyond 2020. For the purposes of this analysis, and for simplicity, therefore, AMS assumes constant the portions of planted acreage by intended use as reported for 2020.

To reiterate, AMS is aware that raw hemp product at the producer level may take years to enter the retail market. The analysis in Tables 4 and 5 is meant to show potential consumer demand for hemp products at the producer level in years 2020 through 2025, and not necessarily the producer sales of hemp cultivated in these specific years. These estimates are sensitive to changes in price. Because planted acreage is derived from total sales, a change in price causes an inverse change in the estimate of planted acreage; however,

the relationship between price and sales is, of course, positive.

Many states reported to AMS that the land on which hemp is currently grown was previously utilized for cultivation of corn. Using data from the National Agricultural Statistics Service (NASS) on the production value of corn for grain and acres harvested, AMS determines a value per harvested acre of corn of \$630. This value is a national average of the three-year period of 2017 through 2019, which are the most recent years for which data is available.<sup>38</sup> For the purposes of this analysis, this value of \$630 per acre will serve as the opportunity cost to hemp producers. The opportunity cost is the potential returns that are foregone in pursuit of an alternative. The potential foregone returns, in this case, are \$630 per acre for corn cultivation; and, the alternative is hemp cultivation. Applying this value to the estimates of acreage required to meet estimated producer sales as calculated in Table 5 results in the total opportunity cost to producers in years 2020 through 2025 as shown in Table 6.

TABLE 6—CALCULATION OF OPPORTUNITY COST OF HEMP CULTIVATION UNDER RULE

2017–2019 average returns per acre of corn for grain <sup>1</sup> .....						\$630
Year	2020	2021	2022	2023	2024	2025
Planted acres due to rule <sup>2</sup> .....	31,820	56,187	84,437	116,633	137,742	210,465
Opportunity cost (millions) <sup>3</sup> .....	\$20	\$35	\$53	\$73	\$87	\$133

Sources and notes:

<sup>1</sup> National Agricultural Statistics Service (NASS).

<sup>2</sup> See Table 5 estimate calculation.

<sup>3</sup> Product of 2017–2019 average returns per acre of corn for grain and acres worth of hemp sold.

In the IFR, AMS calculated an opportunity cost of \$591 per acre, using an average of returns per acre for all cropland, weighted by area planted or bearing. This estimate utilized NASS crop totals for fruits, vegetables, and traditional field crops. At the time of the writing of the IFR, AMS had little information as to the prior uses of land currently being cultivated for hemp. To address this in the final rule, AMS sought input from state departments of agriculture, most of which reported that the land on which hemp is currently grown was previously utilized for cultivation of corn.

AMS has modified its sampling and testing requirements, which are described in the section in this rule titled “Sampling for total THC”, to

allow for “performance-based sampling”. A performance-based protocol must have the potential to ensure at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level. Performance-based sampling achieves defined objectives and focuses on results. It differs significantly from a prescriptive action in which licensees are provided detailed direction on how those results are to be obtained. A performance-based approach would simply set a performance objective (e.g., reliability of 95 percent) and allow the States and Indian Tribes considerable freedom in how to achieve that reliability objective with their sampling methodology.

To estimate the number of lots to be sampled in each year, AMS employs the Cochran Formula:

$$n_0 = \frac{z^2 p(1-p)}{e^2},$$

where  $n_0$  is the sample size,  $Z$  is the  $z$ -value associated with a confidence interval,  $p$  is the estimated proportion of the population that has the attribute in question, and  $e$  is the margin of error or the desired level of precision.

Inserting the  $z$ -value that corresponds to a 95 percent confidence interval, assuming maximum variability for  $p$  at 50 percent, and applying the margin of error of one percent results in the following sample size:

<sup>38</sup> NASS. Quick Stats. Variable “Corn, grain—production, measured in \$” divided by variable “Corn, grain—acres harvested”.

$$n_0 = \frac{1.96^2(0.5(1-0.5))}{0.01^2} = 9,604 \text{ samples.}$$

The Cochran Formula assumes an unlimited population size; however, the formula can be modified to return a smaller sample size for a finite population:

$$n = \frac{n_0}{1 + \frac{(n_0 - 1)}{N}},$$

where  $n$  is the modified sample size,  $n_0$  is the Cochran Formula sample size, and  $N$  is the population size.

Table 7 shows the number of sampled lots,  $n$ , required for a 95 percent confidence interval and one percent margin of error for each year's total number of lots,  $N$ . The total annual cost of sampling and testing borne by producers is calculated using a cost per lot of \$565, which was estimated using hourly rates for inspectors and for laboratory services of \$75 and \$98, respectively; two hours, apiece, spent

sampling, driving, and testing; 120 miles driven; and, \$0.58 per mile compensation. In its calculation of total number of lots from total planted acreage, AMS utilized the portions of planted acreage by intended use, introduced in Table 5, and data from the Farm Service Agency (FSA) from which average lot sizes for hemp by intended use were derived.

Table 7. Calculation of sampling and testing costs to producers							
Assumed constant in each year							
Intended use	Portions of planted acreage by use <sup>1</sup>	Average number of acres per lot <sup>2</sup>	Cochran Formula <sup>3</sup>	Modification for small sample size <sup>4</sup>	Sampling & testing cost per lot <sup>5</sup>		
Cannabinoids	80%	10	$n_0 = \frac{Z^2 p(1-p)}{e^2}$	$n = \frac{n_0}{1 + \frac{(n_0-1)}{N}}$	\$ 565		
Fiber	3%	15					
Grain	17%	37					
Year	Total planted acreage <sup>6</sup>	Intended use	Total planted acreage by use <sup>7</sup>	Total number of lots <sup>8</sup>	$n_0$	$n$	Sampling & testing costs (millions) <sup>9</sup>
2020	159,102	Cannabinoids	127,282	12,728	9,604	5,659	\$ 3.20
		Fiber	4,773	318			
		Grain	27,047	731			
2021	280,934	Cannabinoids	224,747	22,475	9,604	6,886	\$ 3.89
		Fiber	8,428	562			
		Grain	47,759	1,291			
2022	422,184	Cannabinoids	337,747	33,775	9,604	7,606	\$ 4.30
		Fiber	12,666	844			
		Grain	71,771	1,940			
2023	583,165	Cannabinoids	466,532	46,653	9,604	8,069	\$ 4.56
		Fiber	17,495	1,166			
		Grain	99,138	2,679			
2024	688,711	Cannabinoids	550,969	55,097	9,604	8,272	\$ 4.67
		Fiber	20,661	1,377			
		Grain	117,081	3,164			
2025	1,052,327	Cannabinoids	841,862	84,186	9,604	8,688	\$ 4.91
		Fiber	31,570	2,105			
		Grain	178,896	4,835			

Sources and notes:

<sup>1</sup> The Jacobsen. Hemp Daily Bulletin, September 8, 2020. Estimated US Hemp Acreage 2020.

<sup>2</sup> Farm Service Agency producer data.

<sup>3</sup> Where  $n_0$  is the sample size,  $Z$  is the z-value associated with a confidence interval,  $p$  is the estimated proportion of the population that has the attribute in question, and  $e$  is the margin of error or the desired level of precision.

<sup>4</sup> Where  $n$  is the modified sample size,  $n_0$  is the Cochran Formula sample size, and  $N$  is the population size.

<sup>5</sup> Assumes hourly rates for inspector of \$75 and for laboratory services of \$98; also assumes time spent sampling, time spent driving, and time spent testing of 2 hours each; assumes 120 miles driven and mileage compensation rate of \$0.58 per mile.

<sup>6</sup> See Table 4.

<sup>7</sup> Product of total planted acreage and portions of planted acreage by use.

<sup>8</sup> Quotient of total planted acreage and average number of acres per lot.

<sup>9</sup> Product of sample size  $n$  and sampling & testing cost per lot.

Some portion of tested lots are likely to return results with THC concentrations greater than 0.3 percent. To estimate this percentage, AMS utilized data, specific to this very question, collected by the National Industrial Hemp Regulators during a November 2019 meeting. The average portion of tests that would return results

of THC concentrations greater than 0.3 percent, weighted by the number of tests administered in each state, was 25 percent. In Table 8, AMS applies this percentage to estimate total noncompliant lots in each year and the cost to dispose of noncompliant acreage. AMS is aware of other estimates of THC concentration failure rates. As of

November 2020, States and Tribes operating under the 2018 Farm Bill reported 4,192 licensed producers representing 6,166 acres planted. Of these acres planted, approximately 12 percent were destroyed due to THC levels exceeding 0.3 percent. This data, however, is limited because many approved plans have not all been fully

implemented. USDA expects more data will be available as the 2021 season begins and States and Tribes implement their programs.

Table 8. Calculation of disposal costs to producers

Assumed constant in each year						
Intended use	Portion of tests with results of noncompliant THC levels <sup>1</sup>	Portions of planted acreage by use <sup>2</sup>	Average number of acres per lot <sup>3</sup>	Disposal time per acre of hemp (hours) <sup>4</sup>	Compliance officer hourly salary <sup>5</sup>	Cost per acre of noncompliant hemp disposal <sup>6</sup>
Cannabinoids	25%	80%	10	0.25	\$ 57	\$ 14.25
Fiber		3%	15			
Grain		17%	37			

Year	Intended use	Sampled & tested lots <sup>7</sup>	Noncompliant lots <sup>8</sup>	Noncompliant acres <sup>9</sup>	Total noncompliant acreage disposal costs (millions) <sup>10</sup>
2020	Cannabinoids	5,659	1,415	11,319	\$ 0.30
	Fiber			637	
	Grain			8,899	
2021	Cannabinoids	6,886	1,721	13,772	\$ 0.36
	Fiber			775	
	Grain			10,828	
2022	Cannabinoids	7,606	1,902	15,212	\$ 0.40
	Fiber			856	
	Grain			11,961	
2023	Cannabinoids	8,069	2,017	16,139	\$ 0.42
	Fiber			908	
	Grain			12,689	
2024	Cannabinoids	8,272	2,068	16,544	\$ 0.43
	Fiber			931	
	Grain			13,008	
2025	Cannabinoids	8,688	2,172	17,377	\$ 0.46
	Fiber			977	
	Grain			13,663	

Sources and notes:

- <sup>1</sup> National Industrial Hemp Regulators' conference call. November 2019.
- <sup>2</sup> The Jacobsen. Hemp Daily Bulletin, September 8, 2020. Estimated US Hemp Acreage 2020.
- <sup>3</sup> Farm Service Agency producer data.
- <sup>4</sup> AMS estimate based on state and producer feedback.
- <sup>5</sup> Bureau of Labor and Statistics. Occupational Employment Statistics Survey. May 2019; see PRA section.
- <sup>6</sup> Product of disposal time per acre of hemp and compliance officer hourly salary.
- <sup>7</sup> See Table 7 sample size *n*.
- <sup>8</sup> Product of sampled & tested lots and portion of tests with results of noncompliant THC levels.
- <sup>9</sup> Product of noncompliant lots, portions of planted acreage by use, and average number of acres per lot.
- <sup>10</sup> Product of the sum of noncompliant acres and cost per acre of noncompliant hemp disposal.

AMS has issued guidance on approved methods for disposal of noncompliant hemp material, including plowing under, mulching or composting, disking, bush mowing or chopping, deep burial, and burning. AMS requires disposal of noncompliant hemp using one of these methods.

Discussion with state departments of agriculture and producers led AMS to estimate an average of 15 minutes per acre required to dispose of noncompliant material. This 15-minute estimate is an average across all disposal methods. According to the May 2019 Occupational Employment Statistics

Survey of the Bureau of Labor and Statistics, the mean hourly wage of a compliance officer is \$35. Assuming 39 percent of total compensation accounts for benefits, then total compensation of a compliance officer is \$57 per hour. This is described in the Paperwork Reduction Act (PRA) section of this

rule. Applying the total hourly salary of a compliance officer to the disposal time per acre of hemp results in a per acre cost of \$14.25 for disposal of noncompliant hemp acreage.

The PRA section details the burdens of reporting and recordkeeping and their associated costs. Table 9 shows the calculations of the reporting and recordkeeping costs to producers that

will be imposed by this rule. All assumptions in this table have been previously introduced. The PRA section describes how each estimate of time was calculated per required form.

Table 9. Calculation of total reporting and recordkeeping costs to producers

Assumed constant in each year								
Portions of producer licenses issued by Plan <sup>1</sup>		Portion of total planted acreage or lots under USDA Plan <sup>2</sup>		Reporting & recordkeeping hours per producer (required of all) <sup>3</sup>		Reporting & recordkeeping hours per disposed lot <sup>4</sup>		Hourly salary of a compliance officer <sup>5</sup>
USDA Plan	State/Tribal Plans	15%		USDA Plan	State/Tribal Plans	USDA Plan	State/Tribal Plans	\$
20%	80%			2.14	2.25	0.42	0.25	57
Year	Producers <sup>6</sup>			Noncompliant lots for disposal <sup>7</sup>		Total reporting & recordkeeping hours <sup>8</sup>		Total producer reporting & recordkeeping cost (millions) <sup>9</sup>
	Total	USDA Plan	State/Tribal Plans	USDA Plan	State/Tribal Plans	USDA Plan	State/Tribal Plans	
2020	20,000	4,000	16,000	212	1,203	8,640	36,289	\$ 2.56
2021	22,000	4,400	17,600	258	1,463	9,514	39,953	\$ 2.82
2022	24,200	4,840	19,360	285	1,616	10,466	43,951	\$ 3.10
2023	26,620	5,324	21,296	303	1,715	11,508	48,330	\$ 3.41
2024	29,282	5,856	23,426	310	1,758	12,650	53,131	\$ 3.75
2025	32,210	6,442	25,768	326	1,846	13,908	58,422	\$ 4.12

Sources and notes:  
<sup>1</sup> Portions of the number of producers under the USDA Plan and the State and Tribal Plans in 2020; data from state departments of agriculture.  
<sup>2</sup> Portion of planted acreage in states operating under USDA Plan; planted acreage data from state departments of agriculture.  
<sup>3</sup> See PRA section.  
<sup>4</sup> See PRA section.  
<sup>5</sup> Bureau of Labor and Statistics. Occupational Employment Statistics Survey. May 2019; see PRA section.  
<sup>6</sup> See Table 2 for total producers; product of total producers and portions of producer licenses issued by Plan.  
<sup>7</sup> Product of noncompliant lots in Table 8 and portions of total planted acreage or lots under USDA Plan versus State/Tribal Plans.  
<sup>8</sup> Sum of the product of reporting & recordkeeping hours per producer and producers and the product of reporting & recordkeeping hours per disposed lot and noncompliant lots for disposal.  
<sup>9</sup> Product of hourly salary of a compliance officer and the sum of total reporting & recordkeeping hours.

In order to obtain a producer license, AMS requires that each producer, or key participant of a business entity, submit to a background check, or criminal history report, at least every three years. A key participant is a person with a direct or indirect financial interest in the hemp-producing entity, including a chief executive officer, a chief operating officer, and a chief financial officer. The

cost of a criminal history report conducted by the Federal Bureau of Investigation (FBI) is \$18 per record. For the purposes of this analysis, AMS assumes each producer license to represent three key participants. The total annual cost of a background check for three key participants every three years at minimum is \$18 per producer. The producer net benefits of this rule to society are shown in Table 10.

Subtracted from producer sales due to the rule are the opportunity costs of the land on which hemp is currently grown; sampling and testing costs; disposal of noncompliant acreage; reporting and recordkeeping burdens; and, annual background checks. The producer net benefits of this rule to society range from \$49 million in 2020 to \$357 million in 2025.

TABLE 10—PRODUCER NET BENEFITS TO SOCIETY

[Millions]

	2020	2021	2022	2023	2024	2025
Grower sales due to rule .....	\$75.51	\$133.34	\$200.38	\$276.78	\$326.88	\$499.46
Opportunity cost .....	(20.05)	(35.40)	(53.20)	(73.48)	(86.78)	(132.59)
Sampling & testing .....	(3.20)	(3.89)	(4.30)	(4.56)	(4.67)	(4.91)
Disposal of noncompliant material .....	(0.30)	(0.36)	(0.40)	(0.42)	(0.43)	(0.46)
Reporting & recordkeeping .....	(2.56)	(2.82)	(3.10)	(3.41)	(3.75)	(4.12)
Background checks .....	(0.36)	(0.40)	(0.44)	(0.48)	(0.53)	(0.58)
Net benefits .....	49.05	90.47	138.95	194.43	230.72	356.80

*States, Indian Tribes, and USDA*

States and Indian Tribes have the authority to establish fee structures to fund their hemp programs. As of the writing of this analysis, about half of the states with plans approved by USDA reported their programs as being full funded through user-fees. To estimate the cost of administering a hemp program, AMS calculated an average of the total fees charged to producers by these states, which reported as fully user-fee funded, to use as a proxy for the per producer cost of hemp program administration. The fees used to calculate this average included those with such designations as application fee, site registration fee, licensing fee, and others. The average did not include fees associated with sampling and testing as these were calculated separately in Table 7. AMS estimates an average cost per producer of hemp program administration of \$800 annually. AMS has no reason to believe that Indian Tribes or USDA will be any more or any less efficient than states in

program administration. AMS believes, therefore, that this figure is a suitable proxy for the cost of program administration to states, Indian Tribes, and USDA per producer who cultivates hemp as a result of this rule.

As discussed in the “Baseline Definition” section, 17 states opted to participate in the new hemp programs authorized by the 2018 Farm Bill in time for the 2020 growing season. These states represented 20 percent of both planted acreage nationwide and the number of producers nationwide. By applying this percentage to the total number of producers in each year, as shown in Table 2, AMS estimates the number of producers that will cultivate hemp due to this rule. The product of the number of producers due to this rule and the \$800 per grower proxy for administration costs results in program administration costs to States, Indian Tribes, and USDA of \$3 million in 2020 to \$5 million in 2025.

This rule places a reporting and recordkeeping burden on states and

Indian Tribes as detailed in the PRA section of this rule. The total time required per state or tribe for reporting and recordkeeping is 25.25 hours annually. AMS assumes constant the number of states and Indian Tribes that will operate their own hemp programs at 100 in total from 2020 through 2025. In total, the time required of 100 states and Indian Tribes for 25.25 hours of reporting and recordkeeping is 2,525 hours. Applying the hourly salary of a compliance officer of \$57 to this total results in an annual cost to all states and Indian Tribes of reporting and recordkeeping of \$143,919, or \$1,439 per state or tribe.

The total administration costs to states, Indian Tribes, and USDA are calculated in Table 11. They include the costs to all three entities of program administration, and the costs of reporting and recordkeeping to states and Indian Tribes. Total administration costs to states, Indian Tribes, and USDA range from \$3 million in 2020 to \$5 million in 2025.

TABLE 11—TOTAL COSTS TO STATES, INDIAN TRIBES, AND USDA  
[Millions]

	2020	2021	2022	2023	2024	2025
Program administration .....	\$(3.20)	\$(3.52)	\$(3.87)	\$(4.26)	\$(4.69)	\$(5.15)
Reporting & recordkeeping .....	(0.14)	(0.14)	(0.14)	(0.14)	(0.14)	(0.14)
Total costs .....	(3.34)	(3.66)	(4.02)	(4.40)	(4.83)	(5.30)

*Laboratories*

This rule also places a reporting and recordkeeping burden on laboratories as they will be required to report on the results of samples tested for THC content to the entities administering the hemp programs. The PRA section of this

rule estimates an annual reporting and recordkeeping requirement for laboratories of 0.58 hours per sampled and tested lot. As calculated in Table 7, the total number of lots to be sampled and tested in each year is 5,659 in 2020; 6,886 in 2021; 7,606 in 2022; 8,069 in 2023; 8,272 in 2024; and, 8,688 in 2025.

Multiplying the total number of lots to be sampled and tested in each year by the annual reporting and recordkeeping requirement of 0.58 hours per sampled and tested lot and by the hourly salary of a compliance officer of \$57 results in the total annual costs to laboratories as shown in Table 12.

TABLE 12—TOTAL COSTS TO LABORATORIES  
[Millions]

	2020	2021	2022	2023	2024	2025
Reporting & recordkeeping .....	\$(0.19)	\$(0.23)	\$(0.25)	\$(0.27)	\$0.27)	\$(0.29)

*Total Net Benefit*

Producers, states, Indian Tribes, and USDA, and laboratories are the entities most likely to be impacted by this rule.

For this reason, the net benefits or costs of this rule to these entities have been evaluated in this analysis. The total net benefits to society as a whole and their

present values by year are shown in Table 13. The rule has a positive net benefit in every year, ranging from \$46 million in 2020 to \$351 million in 2025.

TABLE 13—TOTAL NET BENEFITS TO SOCIETY  
[Millions]

Entity	2020	2021	2022	2023	2024	2025
Producers .....	\$49.05	\$90.47	\$138.95	\$194.43	\$230.72	\$356.80
States, Tribes & USDA .....	(3.34)	(3.66)	(4.02)	(4.40)	(4.83)	(5.30)

TABLE 13—TOTAL NET BENEFITS TO SOCIETY—Continued  
[Millions]

Entity	2020	2021	2022	2023	2024	2025
Laboratories .....	(0.19)	(0.23)	(0.25)	(0.27)	(0.27)	(0.29)
Total .....	45.52	86.58	134.68	189.76	225.61	351.21

Present values of net benefits annualized at the given discount rates

Discount rates	2020	2021	2022	2023	2024	2024
3% .....	\$45.52	\$84.06	\$126.95	\$173.66	\$200.45	\$302.96
7% .....	45.52	80.92	117.63	154.90	172.12	250.41

*Alternatives*

In developing this final rule, AMS considered several alternatives to the policies that were adopted. The first of these was related to methodologies for sampling. The methodologies considered include sampling and testing of all lots, as mandated in the IFR, sampling and testing based on risk, and sampling and testing based on performance. The latter of these was the sampling methodology that was chosen for the final rule as it results in the lowest total cost to producers.

Performance-based sampling also grants flexibility to States and Indian Tribes in the development of sampling methodologies. In the IFR, AMS required sampling of every hemp lot, regardless of intended use; however, AMS has determined that compliance to this method would too greatly burden producers as well as program administrators, whose responsibility it would be to enforce it. AMS also considered requiring risk-based sampling, which would mandate minimum portions of sampling of lots

by intended use. The portions of lots to be sampled by intended use that were considered were 50 percent of lots for cannabinoids, 10 percent of lots for fiber, and 10 percent of lots for grain. AMS currently lacks sufficient data to successfully carry out a risk-based sampling methodology that would be applicable to the varying growing regions nationwide; therefore, the risk-based sampling methodology was not chosen for this final rule. An analysis of these sampling methodologies is illustrated in Table 14.

Table 14. Analysis of alternative sampling methodologies

Intended use	Portions to be sampled & tested based on methodology			Cost per lot of sampling & testing
	All lots (IFR)	Risk-based	Performance-based (FR)	
Cannabinoids	100%	50%	USDA Plan acreage only	\$ 565
Fiber		10%		
Grain		10%		

Year	Intended use	Total number of lots	Lots sampled & tested			Total cost of sampling & testing		
			IFR	Risk-based	Performance-based	IFR	Risk-based	Performance-based
2020	Cannabinoids	12,728	13,777	6,469	5,659	\$ 7,784,210	\$ 3,654,983	\$ 3,197,536
	Fiber	318						
	Grain	731						
2021	Cannabinoids	22,475	24,327	11,423	6,886	\$ 13,744,954	\$ 6,453,779	\$ 3,890,515
	Fiber	562						
	Grain	1,291						
2022	Cannabinoids	33,775	36,559	17,166	7,606	\$ 20,655,739	\$ 9,698,656	\$ 4,297,440
	Fiber	844						
	Grain	1,940						
2023	Cannabinoids	46,653	50,499	23,711	8,069	\$ 28,531,888	\$ 13,396,808	\$ 4,559,260
	Fiber	1,166						
	Grain	2,679						
2024	Cannabinoids	55,097	59,639	28,003	8,272	\$ 33,695,823	\$ 15,821,472	\$ 4,673,701
	Fiber	1,377						
	Grain	3,164						
2025	Cannabinoids	84,186	91,126	42,787	8,688	\$ 51,486,114	\$ 24,174,691	\$ 4,908,947
	Fiber	2,105						
	Grain	4,835						

Sources and notes:  
See Table 7 for calculations and references.

Secondly, AMS considered retaining at 0.5 percent the limit for total THC content that would result in a negligent violation, as required in the IFR. Based on comments, however, AMS has determined this requirement to be too greatly burdensome to producers as factors beyond the control of the producer, such as seed genetics, weather and climate, may cause an increase in total THC-levels. By increasing the negligent violation threshold to 1.0 percent, AMS diminishes the risk to producers of incurring a negligent violation, which results in time and cost savings to producers and to program-administering entities.

Finally, AMS considered mandating a post-sample harvest window of 15 days, as required in the IFR. Based on comments and in consideration of the time required to complete sampling and testing activities, AMS has determined that requiring a 15-day post-sample harvest window would place undue strain on resources. AMS believes that the extension of the post-sample harvest window to 30 days will provide producers with a beneficial flexibility to adjust to unforeseen weather events and will accommodate complicated harvest processes.

#### **Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. AMS prepared an initial regulatory flexibility act analysis presented with the interim final rule, and has now prepared this Final Regulatory Flexibility Act Analysis. AMS has determined that this rule will have a significant economic impact on a substantial number of small businesses because many small businesses will not be able to participate in the hemp market without this rule.

#### *Need for Regulation*

The rule is necessary to facilitate the domestic cultivation of hemp for sale into the market for hemp products by creating a set of minimum standards to ensure that hemp being produced under this program meets all statutory requirements. The rule establishes minimum requirements for States and

Indian Tribes to obtain program approval and, for producers operating under the Federal program to obtain a license and meet operating requirements under that license. Without these provisions, it would not be possible to grow hemp legally.

Both the declassification of hemp, and the prohibition on interference with interstate transportation apply to hemp that is grown under an approved State or Tribal plan, or under a Federal license. As a result, this regulation facilitates provisions of the 2018 Farm Bill that would otherwise be self-implementing.

#### *Overview of the Action*

The 2018 Farm Bill granted regulatory authority of domestic hemp production to the State departments of agriculture, Tribal governments, and USDA. States and Indian Tribes wishing to operate their own programs must submit to USDA plans that include provisions for maintaining information regarding the land on which hemp is produced, for testing the levels of THC, for disposal of plants that do not meet necessary requirements, and for procedures to ensure compliance with the requirements of the new part, including background checks of all key participants. State and Tribal Plans must be approved by USDA. This rule outlines requirements by which the USDA would approve plans submitted by States and Tribal governments for oversight of hemp production. The 2018 Farm Bill also directs USDA to develop a plan for use by hemp producers in States or Indian Tribes where no State or Tribal Plan has been approved and that do not prohibit the cultivation of hemp. These actions will promote consistency in regulations governing the legal production of hemp across the country.

#### *Potentially Affected Small Entities*

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$1 million. Unfortunately, very little data exists on hemp grower sales receipts. To conduct this analysis, however, AMS estimated prices per acre by intended use of hemp to find the acreage

equivalent of \$1 million per intended use. AMS encountered data limitations due to the lack of reporting by States and Tribes that have not started implementing the 2018 Farm Bill provisions and the extension of the 2014 Farm Bill provisions which do not require reporting from States.

To this end, AMS utilized data on acreage by intended use from the Kentucky Department of Agriculture and the Montana Department of Agriculture. Together, Kentucky and Montana make up a large amount of domestic acreage and represent diversity in hemp planted by intended use. For the purpose of this analysis, therefore, AMS assumes that the combined planted acreage by intended use in Kentucky and Montana adequately represent the planted acreage by intended use across the United States.

For yield estimates, AMS compared the hemp enterprise budgets published by seven different academic institutions that represent the growing conditions across the country. Aside from these seven, AMS is unaware of any other hemp enterprise budgets published by an academic institution. AMS sourced 2019 and 2020 prices from the Jacobsen to estimate per-pound prices for cannabinoids, fiber, and grain of \$3.90, \$0.09, and \$0.53, respectively. The price for cannabinoids assumes 6 percent CBD content at \$0.65 per CBD percentage per pound.

Using these prices and yield estimates, AMS calculated a price per acre for each intended use of hemp, as shown in Table 15. From the estimates of price per acre by intended use, AMS calculated the equivalent of \$1 million in acres of hemp product per intended use. Of the 922 unique producers in the combined data from the Kentucky and Montana Departments of Agriculture, 97 percent reported acreage no greater than the amounts necessary to reach \$1 million, based on the estimated prices per acre. Assuming that these data are representative of the U.S. as a whole, then 97 percent of domestic producers of hemp would meet the SBA size standard of a small business of annual receipts of no greater than \$1 million.

Table 15. Calculation of the portion of producers considered to be small per SBA standards			
Intended use	Yield (lbs/acre) <sup>1</sup>	Price per lb <sup>2</sup>	Price per acre <sup>3</sup>
Cannabinoids	1,500	\$ 3.90	\$ 5,850
Fiber	8,000	\$ 0.09	\$ 720
Grain	1,200	\$ 0.53	\$ 636
Intended use	Acreeage equivalent of \$1 million <sup>4</sup>	Small producers	
Cannabinoids	171	97%	
Fiber	1,389		
Grain	1,572		
Sources and notes:			
<sup>1</sup> Hemp Enterprise Budgets from University of Kentucky, University of Tennessee, University of Georgia, North Dakota State University, Alabama A&M and Auburn Universities, Cornell University, and Penn State University.			
<sup>2</sup> The Jacobsen. Estimates based on 2019 and 2020 prices; for biomass, CBD% assumed to be 6%.			
<sup>3</sup> Product of yield and price per lb.			
<sup>4</sup> Quotient of \$1 million and price per acre by intended use.			

#### *Alternatives Considered To Minimize Impacts of the Rule*

In developing this final rule, due to comments received and experiences from the 2020 season, AMS considered several alternatives to the policies that were adopted. The first of these was related to methodologies for sampling. The methodologies considered include sampling and testing of all lots, as mandated in the IFR, sampling and testing based on risk, and sampling and testing based on performance. The latter of these was the sampling methodology that was chosen for the final rule as it results in the lowest total cost to producers. Performance-based sampling also grants flexibility to States and Indian Tribes in the development of sampling methodologies. Some States currently have considered performance-based sampling under the 2014 Farm Bill. However, this information is not available and will need to be evaluated and approved by USDA as part of State and Tribal plans before it can be implemented under the 2018 Farm Bill program if States and Tribes decide to utilize this option. In the IFR, AMS required sampling of every hemp lot, regardless of intended use; however, AMS has determined that compliance to this method would too greatly burden producers as well as program

administrators, whose responsibility it would be to enforce it. AMS also considered requiring risk-based sampling, which would mandate minimum portions of sampling of lots by intended use. The portions of lots to be sampled by intended use that were considered were 50 percent of lots for cannabinoids, 10 percent of lots for fiber, and 10 percent of lots for grain. AMS currently lacks sufficient data to successfully carry out a risk-based sampling methodology that would be applicable to the varying growing regions nationwide; therefore, the risk-based sampling methodology was not chosen for this final rule.

Secondly, AMS considered retaining at 0.5 percent the limit for total THC content that would result in a negligent violation, as required in the IFR. Based on comments, however, AMS has determined this requirement to too greatly burden producers as factors beyond the control of the producer, such as seed genetics, weather and climate, may cause an increase in total THC-levels. By increasing the negligent violation threshold to 1.0 percent, AMS diminishes the risk to producers of incurring a negligent violation, which results in time and cost savings to producers and to program-administering entities.

Finally, AMS considered mandating a post-sample harvest window of 15 days, as required in the IFR. Based on comments and in consideration of the time required to complete sampling and testing activities, AMS has determined that requiring a 15-day post-sample harvest window would place undue strain on resources. AMS believes that the extension of the post-sample harvest window to 30 days will provide producers with a beneficial flexibility to adjust to unforeseen weather events and will accommodate complicated harvest processes.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as “major,” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 7 CFR Part 990**

Acceptable hemp THC level, Agricultural commodities, Cannabis, Corrective action plan, Delta-9 tetrahydrocannabinol, Drugs, Dry weight basis, Hemp, Liquid chromatography, Laboratories, Marijuana.

■ For the reasons stated in the preamble, AMS revises 7 CFR part 990 to read as follows:

## PART 990—DOMESTIC HEMP PRODUCTION PROGRAM

### Subpart A—Definitions

Sec.  
990.1 Meaning of terms.

### Subpart B—State and Tribal Hemp Production Plans

990.2 State and Tribal plans; General authority.  
990.3 State and Tribal plans; Plan requirements.  
990.4 USDA approval of State and Tribal plans.  
990.5 Audit of State or Tribal plan compliance.  
990.6 Violations of State and Tribal plans.  
990.7 Establishing records with USDA Farm Service Agency.  
990.8 Production under Federal law.

### Subpart C—USDA Hemp Production Plan

990.20 USDA requirements for the production of hemp.  
990.21 USDA hemp producer license.  
990.22 USDA hemp producer license approval.  
990.23 Reporting hemp crop acreage with USDA Farm Service Agency.  
990.24 Responsibility of a USDA licensee prior to harvest.  
990.25 Standards of performance for detecting total delta-9 tetrahydrocannabinol (THC) concentration levels.  
990.26 Responsibility of a USDA producer after laboratory testing is performed.  
990.27 Non-compliant cannabis plants.  
990.28 Compliance.  
990.29 Violations.  
990.30 USDA producers; License suspension.  
990.31 USDA licensees; Revocation.  
990.32 Recordkeeping requirements.

### Subpart D—Appeals

990.40 General adverse action appeal process.  
990.41 Appeals under the USDA hemp production plan.  
990.42 Appeals under a State or Tribal hemp production plan.

### Subpart E—Administrative Provisions

990.60 Agents.  
990.61 Severability.  
990.62 [Reserved]  
990.63 Interstate transportation of hemp.

### Subpart F—Reporting Requirements

990.70 State and Tribal hemp reporting requirements.  
990.71 USDA plan reporting requirements.

**Authority:** 7 U.S.C. 1639o note, 1639p, 1639q, 1639r.

### Subpart A—Definitions

#### § 990.1 Meaning of terms.

Words used in this subpart in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this part,

unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

**Acceptable hemp THC level.** When a laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State or Tribal hemp plans or the USDA hemp plan is when the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3 percent or less. For example, if the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35 percent and the measurement of uncertainty is  $\pm 0.06$  percent, the measured total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “acceptable hemp THC level” affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the

Act. Agricultural Marketing Act of 1946.

**Agricultural Marketing Service or AMS.** The Agricultural Marketing Service of the U.S. Department of Agriculture.

**Applicant.** (1) A State or Indian Tribe that has submitted a State or Tribal hemp production plan to USDA for approval under this part; or

(2) A producer in a State or territory of an Indian Tribe that is not subject to a State or Tribal hemp production plan and who has submitted an application to USDA for a license under the USDA hemp production plan under this part.

**Audit.** An official inspection of an individual’s or organization’s accounts and paperwork or documentation by an independent body. An audit also refers to a compliance audit of States and Indian Tribes with approved hemp production plans by USDA to determine compliance with their approved plan, the regulations in this part, and the Act. For this part, audit relates to documentation related to authorities under the 2018 Farm Bill to produce hemp.

**Cannabis.** A genus of flowering plants in the family Cannabaceae of which

*Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the total delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

**Controlled Substances Act (CSA).** The Controlled Substances Act as codified in 21 U.S.C. 801 *et seq.*

**Conviction.** Means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this part, a conviction is expunged when the conviction is removed from the individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this part.

**Corrective action plan.** A plan proposed by a licensed hemp producer and approved by the governing entity for correcting a negligent violation or non-compliance with the applicable State, Tribal, or USDA hemp production plan, its terms, the applicable law(s), and/or this part. Also, a plan proposed by a State or Tribal government for correcting violations or non-compliances with USDA-approved State or Tribal hemp programs.

**Criminal history report.** The Federal Bureau of Investigation’s Identity History Summary.

**Culpable mental state greater than negligence.** To act intentionally, knowingly, willfully, or recklessly.

**Decarboxylated.** The completion of the chemical reaction that converts THC-acid (THCA) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid ((delta-9 THC) + (0.877 \* THCA)).

**Decarboxylation.** The removal or elimination of carboxyl group from a molecule or organic compound.

**Disposal.** An activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green

manure; burning plant material; burying plant material into the earth and covering with soil.

*Delta-9 tetrahydrocannabinol* or *THC*. Delta-9 THC is the primary psychoactive component of cannabis. For the purposes of this part, delta-9 THC and THC are interchangeable.

*Drug Enforcement Administration* or *DEA*. The United States Drug Enforcement Administration.

*Dry weight basis*. The ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

*Entity*. A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

*Farm Service Agency* or *FSA*. An agency of the United States Department of Agriculture.

*Gas chromatography* or *GC*. A type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

*Geospatial location*. A location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

*Handle*. To harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. "Handle" also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.

*Hemp*. The plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

*Immature plants*. A cannabis plant that is not flowering.

*Indian Tribe* or *Tribe*. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

*Information sharing system*. The database that allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.

*Key participants*. A sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

*Law enforcement agency*. Any Federal, State, Tribal, or local law enforcement agency.

*Liquid chromatography* or *LC*. A type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. LC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid absorbent material to separate and analyze compounds.

*Lot*. A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area. The term lot also means the terms "farm," "tract," "field," and "subfield" as these are terms used by FSA in 7 CFR 718.2 to define lot.

*Marijuana*. Or "marihuana", as defined in the CSA, means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term "marihuana" does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). "Marihuana" means all cannabis that tests as having a THC

concentration level of higher than 0.3 percent on a dry weight basis.

*Measurement of Uncertainty (MU)*. The parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

*Negligence*. Failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

*Phytocannabinoid*. Cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

*Plan*. A set of criteria or regulations under which a State or Tribal government, or USDA, monitors and regulates the production of hemp.

*Post-decarboxylation*. In the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample. See the definition for decarboxylation.

*Produce*. To grow hemp plants for market, or for cultivation for market, in the United States.

*Producer*. A producer as defined in 7 CFR 718.2 specifically of hemp.

*Remediation*. Remediation refers to the process of rendering non-compliant cannabis, compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

*Reverse distributor*. A person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of

marijuana under the Controlled Substances Act.

*Secretary.* The Secretary of Agriculture of the United States Department of Agriculture.

*State.* Any one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

*State department of agriculture.* The agency, commission, or department of a State government responsible for agriculture in the State.

*Territory of the Indian Tribe.* (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State;

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and

(4) Any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

*Total THC.* Total THC is the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9

tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion:  $[Total\ THC = (0.877 \times THCA) + THC]$  which calculates the potential total THC in a given sample.

*Tribal government.* The governing body of an Indian Tribe.

*USDA licensee.* A person, partnership, or corporation licensed

under the USDA plant to grow hemp under the terms established in this part and who produces hemp.

### Subpart B—State and Tribal Hemp Production Plans

#### § 990.2 State and Tribal plans; General authority.

States or Indian Tribes desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian Tribe shall submit to the Secretary for approval, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian Tribe monitors and regulates that production.

#### § 990.3 State and Tribal plans; Plan requirements.

(a) *General requirements.* A State or Tribal plan submitted to the Secretary for approval must include the practice and procedures described in this paragraph (a).

(1) A State or Tribal plan must include a practice to collect, maintain, and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under the State or Tribal plan regarding:

(i) Contact information as described in § 990.70(a)(1);

(ii) A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and

(iii) The status and number of the producer's license or authorization in a format prescribed by USDA.

(2) A State or Tribal plan must include a procedure for accurate and effective sampling of hemp that includes the requirements in this paragraph (a)(2).

(i) Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing. Samples must be collected by a sampling agent. Producers may not collect samples from their own growing facilities.

(ii) Samples shall be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five to eight inches in length from the "main stem" (that includes the leaves and flowers), "terminal bud" (that occurs at the end of a stem), or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant.

(iii) The method used for sampling must be sufficient at a confidence level

of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, States and Tribes may adopt a performance-based method that meets the requirements in paragraphs (a)(2)(iii)(A) and (B) of this section.

(A) The alternative method must be part of the State or Tribe's hemp plan and is subject to USDA approval.

(B) The alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level. The alternative method may consider one or more of the following factors:

(1) Seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe;

(2) Whether the producer is conducting research on hemp;

(3) Whether a producer has consistently produced compliant hemp plants over an extended period of time; and

(4) Factors similar to those in this paragraph (a)(2)(iii)(B).

(iv) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site if possible.

(v) Sampling agents shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(vi) A producer shall not harvest the cannabis crop prior to samples being taken.

(vii) Sampling agents must be trained using USDA, State, or Tribal training procedures. States and Indian Tribes must maintain information, available to producers, about trained sampling agents.

(3) A State or Tribal plan must include a procedure for testing that is able to accurately identify whether the sample contains a total delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses post-

decarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must report the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (a)(3) include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

(i) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part and shall be disposed of or remediated in accordance with § 990.27.

(ii) Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.

(iii) Laboratories conducting analytical testing for purposes of detecting the concentration levels of Total THC shall meet the following requirements:

(A) Laboratory quality assurance must ensure the validity and reliability of test results;

(B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;

(C) The demonstration of testing validity must ensure consistent, accurate analytical performance;

(D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and

(E) Effective disposal procedures for non-compliant samples that do not meet the requirements of this part.

(F) Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(G) Sample preparation of pre- or post-harvest samples shall require grinding of sample to ensure homogeneity of plant material prior to testing. Sample preparation may follow a procedure described by USDA.

(H) After December 31, 2022, States and Indian Tribes shall require that only laboratories registered with the DEA may conduct testing under this section.

(4) A State or Indian Tribe shall require testing laboratories to comply with USDA reporting requirements in

subpart F of this part. Laboratories shall only submit test results used to determine compliance with this part. Test results from informal testing conducted throughout the growing season shall not be reported to USDA.

(5) A State or Tribal plan must include a procedure to comply with the enforcement procedures in § 990.6.

(6) A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.

(i) The disposal must be conducted either by using a DEA-registered reverse distributor or law enforcement; or on site at the farm or hemp production facility.

(ii) The State or Tribal plan must include procedures to verify the disposal or remediation of the cannabis plant. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully. Disposal and remediation means are described at AMS's website.

(iii) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.

(7) A State or Tribal plan must include a procedure for conducting annual inspections of, at a minimum, a random group of producers to verify that hemp is not produced in violation of this part.

(8) A State or Tribal plan must include a procedure for submitting the report described in § 990.70 to the Secretary by the first of each month. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. All such information must be submitted to the USDA in a format that is compatible with USDA's information sharing system.

(9) The State or Tribal government must certify that the State or Indian Tribe has the resources and personnel to carry out the practices and procedures described in paragraphs (a)(1) through (9) of this section.

(10) The State or Tribal plan must include a procedure to collect and share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d). The State or Tribal government is responsible for reporting the information identified in paragraphs (a)(10)(i) through (iii) of this section with AMS. The State or Tribal hemp production plan must include the following:

(i) A requirement that producers report their hemp crop acreage to the FSA, consistent with the requirement in § 990.7.

(ii) Assignment of a license or authorization identifier for each producer in a format prescribed by USDA.

(iii) A requirement that producers report the total acreage of hemp planted, harvested, and, if applicable, disposed or remediated. The State or Tribal government shall collect this information and report it to AMS.

(b) *Relation to State and Tribal law.* A State or Tribal plan may include any other practice or procedure established by a State or Indian Tribe, as applicable; *Provided*, That the practice or procedure is consistent with this part and Subtitle G of the Act.

(1) *No preemption.* Nothing in this part preempts or limits any law of a State or Indian Tribe that:

(i) Regulates the production of hemp; and

(ii) Is more stringent than this part or Subtitle G of the Act.

(2) *References in plans.* A State or Tribal plan may include a reference to a law of the State or Indian Tribe regulating the production of hemp, to the extent that the law is consistent with this part.

#### § 990.4 USDA approval of State and Tribal plans.

(a) *General authority.* No later than 60 calendar days after the receipt of a State or Tribal plan for a State or Tribal territory in which production of hemp is legal, the Secretary shall:

(1) Approve the State or Tribal plan only if the State or Tribal plan complies with this part; or

(2) Disapprove the State or Tribal plan if the plan does not comply with this part. USDA shall provide the State or Tribe with written notification of the disapproval and the cause for the disapproval.

(b) *Amended plans.* A State or Tribal government, as applicable, must submit to the Secretary an amended plan if:

(1) The Secretary disapproves a State or Tribal plan and the State or Indian Tribe wishes to have primary regulatory authority over hemp production within its State or territory of the Indian Tribe; or

(2) The State or Indian Tribe makes substantive revisions to its plan or its laws which alter the way the plan meets the requirements of this part. If this occurs, the State or Tribal government must re-submit the revised plan for USDA approval. Such re-submissions should be provided to USDA within 60 days from the date that the State or

Tribal laws and regulations are effective. Producers shall continue to comply with the requirements of the existing plan while such modifications are under consideration by USDA. If State or Tribal government laws or regulations in effect under the USDA-approved plan change but the State or Tribal government does not submit a revised plan within 60 days from the effective date of the new law or regulation, the existing plan is revoked.

(3) USDA approval of State or Tribal government plan shall remain in effect unless an amended plan must be submitted to USDA because of a substantive revision to a State's or Tribe's plan, a relevant change in State or Tribal laws or regulations, or approval of the plan is revoked by USDA.

(4) Upon USDA approval of a Tribal plan, an Indian Tribe may exercise jurisdiction and therefore primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent regulatory authority.

(c) *Technical assistance.* The Secretary may provide technical assistance to help a State or Indian Tribe develop or amend a plan. This may include the review of draft plans or other informal consultation as necessary.

(d) *Approved State or Tribal plans.* If the Secretary approves a State or Tribal plan, the Secretary shall notify the State or Indian Tribe by letter or email.

(1) In addition to the approval letter, the State or Indian Tribe shall receive their plan approval certificate either as an attachment or via website link.

(2) The USDA shall post information regarding approved plans on its website.

(3) USDA approval of State or Tribal government plans shall remain in effect unless:

(i) The State or Tribal government's laws and regulations in effect under the USDA-approved plan change, thus requiring such plan to be revised and re-submitted for USDA approval.

(ii) A State or Tribal plan must be amended in order to comply with future amendments to Subtitle G the Act and this part.

(e) *Producer rights upon revocation of State or Tribal plan.* If USDA revokes approval of a State or Tribal plan due to noncompliance as defined in paragraph (b)(2) of this section and § 990.5, producers licensed or authorized to produce hemp under the revoked State or Tribal plan may continue to produce for the remainder of the calendar year in which the revocation became effective. Producers operating in a State or Tribal territory

with a revoked plan would have to apply to USDA for a license to continue producing.

#### **§ 990.5 Audit of State or Tribal plan compliance.**

The Secretary may conduct an audit to determine a State or Indian Tribe's compliance with their approved plan.

(a) *Frequency of audits.* Compliance audits may be scheduled, no more frequently than every three years, based on available resources. Audits may include an onsite-visit, a desk-audit, or both. The USDA may adjust the frequency of audits if deemed appropriate based on program performance, compliance issues, or other relevant factors identified and provided to the State or Tribal governments by USDA.

(b) *Scope of audit review.* The audit may include, but is not limited to, a review of the following:

(1) The resources and personnel employed to administer and oversee its approved plan;

(2) The process for licensing and systematic compliance review of hemp producers;

(3) Sampling methods and laboratory testing requirements and components;

(4) Disposal and/or remediation of non-compliant hemp plants or hemp plant material practices, to ensure that correct reporting to the USDA has occurred;

(5) Results of and methodology used for the annual inspections of producers; and

(6) Information collection procedures and information accuracy (*i.e.*, geospatial location, contact information reported to the USDA, legal description of land).

(c) *Audit reports.* (1) Audit reports will be issued to the State or Tribal government no later than 60 days after the audit concludes. If the audit reveals that the State or Tribal government is not in compliance with its USDA approved plan, USDA will advise the State or Indian Tribe of non-compliances and the corrective measures that must be completed to come into compliance with the Act and regulations in this part. The USDA will require the State or Indian Tribe to develop a corrective action plan, which must be reviewed and approved by the USDA. The corrective action plan must include a reasonable date by which the State or Indian Tribe will correct make corrections. USDA will approve or deny the corrective action plan within 60 days of its receipt. USDA will conduct a second audit to determine if the State or Indian Tribe is in compliance with

the corrective action plan and has corrected the non-compliances.

(2) If the USDA determines that the State or Indian Tribe is not in compliance after the second audit, the USDA may revoke its approval of the State or Tribal plan for one year or until the State or Indian Tribe becomes compliant whichever occurs later. USDA will not approve a State or Indian Tribe's plan until the State or Indian Tribe demonstrates upon inspection that it is in compliance with all regulations in this part.

#### **§ 990.6 Violations of State and Tribal plans.**

(a) *Producer violations.* Producer violations of USDA-approved State and Tribal hemp production plans shall be subject to enforcement in accordance with the terms of this section.

(b) *Negligent violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to negligent producer violations as defined under this part. Producers shall not receive more than one negligent violation per growing season. Negligent violations shall include:

(1) Failure to provide a legal description of land on which the producer produces hemp;

(2) Failure to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

(3) Production of cannabis with a total delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

(c) *Corrective action for negligent violations.* Each USDA-approved State or Tribal plan shall provide for the correction of negligent violations. Each corrective action plan shall include, at a minimum, the following terms:

(1) A reasonable date by which the producer shall correct the negligent violation.

(2) A requirement that the producer periodically report to the State department of agriculture or Tribal government, as applicable, on its compliance with the State or Tribal plan and corrective action plan for a period of not less than the next 2 years from the date of the negligent violation.

(3) A producer that negligently violates a State or Tribal plan approved under this part shall not as a result of that violation be subject to any criminal

enforcement action by the Federal, State, Tribal, or local government.

(4) A producer that negligently violates a State or Tribal plan three times during a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(5) The State or Indian Tribe shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.

(d) *Culpable violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to producer violations made with a culpable mental state greater than negligence, including that:

(1) If the State or Tribal government determines that a producer has violated the plan with a culpable mental state greater than negligence, the State or Tribal government, as applicable, shall immediately report the producer to:

(i) The U.S. Attorney General; and  
(ii) The chief law enforcement officer of the State or Indian Tribe, as applicable.

(2) Paragraphs (b) and (c) of this section shall not apply to culpable violations.

(e) *Felonies.* Each USDA-approved State or Tribal plan shall contain provisions relating to felonies. Such provisions shall state that:

(1) A person with a State or Federal felony conviction relating to a controlled substance may not participate in the plan and may not produce hemp under the State or Tribal plan for 10 years from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date.

(2) The State or Tribal plan shall define who is participating in the plan or program and is subject to the felony conviction restriction for purposes of paragraph (e)(1) of this section. To determine whether a person is subject to the felony conviction restriction, the State or Tribe must obtain a criminal history report for that person. The State or Indian Tribe may require additional reports or checks as it deems necessary.

(3) For each license or authorization that the State or Indian Tribe issues, its plan must identify at least one individual as participating in the plan and for whom it will obtain a criminal history report to determine eligibility under paragraph (e)(1) of this section.

(f) *False statement.* Each USDA-approved State or Tribal plan shall state that any person who materially falsifies

any information contained in an application to participate in such program shall be ineligible to participate in that program.

(g) *Appeals.* For States and Indian Tribes who wish to appeal an adverse action, subpart D of this part will apply.

#### **§ 990.7 Establishing records with USDA Farm Service Agency.**

All producers licensed to produce hemp under an USDA-approved State or Tribal plan shall report hemp crop acreage to FSA and shall provide, at minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, or is producing under multiple licenses, production information shall be provided for each location.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) License or authorization identifier in a format prescribed by USDA.

#### **§ 990.8 Production under Federal law.**

Nothing in this subpart prohibits the production of hemp in a State or the territory of an Indian Tribe for which a State or Tribal plan is not approved under this subpart if produced in accordance with subpart C of this part, and if the production of hemp is not otherwise prohibited by the State or Indian Tribe.

#### **Subpart C—USDA Hemp Production Plan**

##### **§ 990.20 USDA requirements for the production of hemp.**

(a) *General hemp production requirements.* The production of hemp in a State or territory of an Indian Tribe where there is no USDA approved State or Tribal plan must be conducted in accordance with this subpart, provided that the production of hemp is not prohibited by the State or territory of an Indian Tribe where production will occur.

(b) *Convicted felon ban.* A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in and producing hemp under the USDA plan from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date.

(c) *Falsifying material information on application.* Any person who materially falsifies any information contained in an application for a license under the USDA plan shall be ineligible to participate in the USDA plan.

##### **§ 990.21 USDA hemp producer license.**

(a) *General application requirements—(1) Requirements and license application.* Any person producing or intending to produce hemp must have a valid license prior to producing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.

(2) *Application dates.* Applicants may submit an application for a license at any time.

(3) *Required information on application.* The applicant shall provide the information requested on the application form, including:

(i) *Contact information.* Full name, residential address, telephone number, and email address. If the applicant is a business entity, the full name of the business, the principal business location address, full name and title of the key participants, title, email address (if available), and employer identification number (EIN) of the business; and

(ii) *Criminal history report.* A current criminal history report for an individual, or if the applicant is a business entity, all key participants, dated within 60 days of the application submission date. A license application will not be considered complete without all required criminal history reports.

(4) *Submission of completed application forms.* Completed application forms shall be submitted to USDA.

(5) *Incomplete application procedures.* Applications missing required information shall be returned to the applicant as incomplete. The applicant may resubmit a completed application.

(6) *License expiration.* USDA-issued hemp producer licenses shall be valid until December 31 of the year three years after the year in which license was issued.

(b) *License renewals.* USDA hemp producer licenses must be renewed prior to license expiration. Licenses are not automatically renewed.

Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria as provided in this subpart for initial applications unless there has been an amendment to the regulations in this part or the law since approval of the initial or last application.

(c) *License modification.* A license modification is required if there is any

change to the information submitted in the application including, but not limited to, sale of a business, the production of hemp in a new location, or a change in the key participants under a license.

(d) *Licensing for research.* (1) Producers that produce hemp for research must obtain a USDA license. However, the hemp that is produced for research and does not enter the stream of commerce is not subject to the sampling requirements in §§ 990.24 and 990.26; provided that the producer adopts and carries out a USDA approved alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level.

(2) USDA licensees shall ensure the disposal of all non-compliant plants in accordance with § 990.27. Only research institutions registered with DEA to handle marijuana can keep hemp that tests over the 0.3 acceptable hemp THC level until the end of the study.

(3) USDA licensees shall comply with the reporting requirements in § 990.71 including reporting disposal of non-compliant plants.

**§ 990.22 USDA hemp producer license approval.**

(a) A license shall not be issued unless:

(1) The application submitted for USDA review and approval is complete and accurate.

(2) The criminal history report(s) submitted with the license application confirms that all key participants to be covered by the license have not been convicted of a felony, under State or Federal law, relating to a controlled substance within the past ten (10) years unless the exception in § 990.20(b) applies.

(3) The applicant, if the applicant was previously or is currently licensed, submitted all reports required as a participant in the hemp production program by this part.

(4) The application contains no materially false statements or misrepresentations and the applicant has not previously submitted an application with any materially false statements or misrepresentations.

(5) The applicant's license is not currently suspended, if the applicant is currently licensed.

(6) The applicant is not applying for a license as a stand-in for someone whose license has been suspended, revoked, or is otherwise ineligible to participate.

(7) The State or territory of the Indian Tribe where the person produces or intends to produce hemp does not have a USDA-approved plan or has not submitted a plan to USDA for approval and is awaiting USDA's decision.

(8) The State or territory of the Indian Tribe where the person produces or intends to produce hemp does not prohibit the production of hemp.

(b) USDA shall provide written notification to applicants whether the application has been approved or denied. USDA shall provide written notification to applicants in a State or territory of an Indian Tribe that has submitted a plan to USDA and is awaiting USDA approval that their application is being returned.

(1) If an application is approved, a license will be issued.

(2) Licenses will be valid until December 31 of the year three after the year in which the license was issued.

(3) Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.

(4) If a license application is denied, the notification from USDA will explain the reason for denial. Applicants may appeal the denial in accordance with subpart D of this part.

(c) If the applicant is producing in more than one State or territory of an Indian Tribe, the applicant may have more than one license to grow hemp. If the applicant has operations in a location covered under a State or Tribal plan, that operation must be licensed under the State or Tribal plan, not the USDA plan.

**§ 990.23 Reporting hemp crop acreage with USDA Farm Service Agency.**

All USDA licensees shall report hemp crop acreage to FSA within 30 days of hemp been planted and shall provide, at a minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location of the lot, greenhouse, building, or site where hemp will be produced. All locations where hemp is produced must be reported to FSA.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) The hemp license number.

**§ 990.24 Responsibility of a USDA licensee prior to harvest.**

USDA licensees must:

(a) No more than 30 days prior to the anticipated harvest of cannabis plants, have a sampling agent collect samples from the cannabis plant for total delta-9 tetrahydrocannabinol concentration level testing.

(b) Have samples collected from the flowering tops of the plant by cutting the top five to eight inches from the "main stem" (that includes the leaves and flowers), "terminal bud" (that occurs at the end of a stem), "or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant. Sampling guidelines and training requirements for sampling agents are available from USDA. The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

(c) Have an authorized representative of the USDA licensee present at the growing site during a scheduled sample collection, if possible.

(d) Ensure that sampling agents are provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, (whether growing or harvested), all hemp production and storage areas, all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(e) Not harvest the cannabis crop prior to samples being taken.

(f) Use post-harvest samples only for remediated biomass.

**§ 990.25 Standards of performance for detecting total delta-9 tetrahydrocannabinol (THC) concentration levels.**

Analytical testing for purposes of determining total THC in cannabis plants shall meet the standards in this section.

(a) Laboratory quality assurance must ensure the validity and reliability of test results.

(b) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing.

(c) The demonstration of testing validity must ensure consistent, accurate analytical performance.

(d) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part.

(e) Laboratory must have an effective disposal procedure for non-compliant samples that do not meet the requirements of this part.

(f) Measurement of uncertainty (MU) must be estimated and reported with

test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(g) At a minimum, analytical testing of samples for total THC must use post-decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must reflect the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (g) include, but are not limited to, gas or liquid chromatography with detection.

(1) The total THC shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(2) Any sample test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part.

(3) After December 31, 2022, USDA licensees may only use laboratories registered with the DEA to conduct testing under this section.

**§ 990.26 Responsibility of a USDA producer after laboratory testing is performed.**

(a) The producer shall harvest the crop no later than thirty (30) days after the date of sample collection.

(b) If the producer fails to complete harvest within thirty (30) days of sample collection, a second pre-harvest sample of the lot shall be required to be submitted for testing.

(c) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material.

(d) Lots that meet the acceptable hemp THC level may enter the stream of commerce.

(e) Lots that do not meet the acceptable hemp THC level are subject to § 990.27.

(f) Any producer may request additional pre-harvest testing if it is believed that the original total delta-9 tetrahydrocannabinol concentration level test results were in error. Additional testing may be conducted by the laboratory that conducted the initial test, or another laboratory.

**§ 990.27 Non-compliant cannabis plants.**

(a) Cannabis plants exceeding the acceptable hemp THC level constitute

marijuana, a schedule I controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.*, and producers must either use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants or ensure the disposal of such cannabis plant on site at the farm or hemp production facility.

(b) Producers must notify USDA of their intent to dispose of or remediate non-conforming plants and verify disposal or remediation by submitting required documentation.

(c) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.

**§ 990.28 Compliance.**

(a) *Audits.* USDA licensees may be audited by the USDA. The audit may include a review of records and documentation, and may include site visits to farms, fields, greenhouses, storage facilities, or other locations affiliated with the producer's hemp operation. The audit may include the current crop year, as well as any previous crop year(s). The audit may be performed remotely or in person.

(b) *Frequency of audit verifications.* Audit verifications may be performed once every three (3) years unless otherwise determined by USDA. If the results of the audit find negligent violations, a corrective action plan may be established.

(c) *Assessment of producer's hemp operations for conformance.* The producer's operational procedures, documentation, recordkeeping, and other practices may be verified during the audit verification. The auditor may also visit the production, cultivation, or storage areas for hemp listed on the producer's license.

(1) *Records and documentation.* The auditor shall assess whether required reports, records, and documentation are properly maintained for accuracy and completeness.

(2) [Reserved]

(d) *Audit reports.* Audit reports will be issued to the producer no later than 60 days after the audit is concluded. If USDA determines through an audit that the producer is not compliant with the Act or this part, USDA shall require a corrective action plan. The corrective action plan must include a reasonable date by which the producer will correct the negligent violation. USDA will approve or deny the corrective action plan within 60 days of its receipt. Producers operating under a corrective action plan must also periodically report to USDA on their compliance

with the plan for a period of not less than two calendar years following the violation. The producer's implementation of a corrective action plan may be reviewed by USDA during a future site visit or audit. If additional instances of noncompliance occur, USDA may revoke the producer's USDA license for one year or until the producer becomes compliant whichever occurs later.

**§ 990.29 Violations.**

Violations of this part shall be subject to enforcement in accordance with the terms of this section.

(a) *Negligent violations.* Hemp producers are not subject to more than one negligent violation per calendar year. A hemp producer shall be subject to enforcement for negligently:

(1) Failing to provide an accurate legal description of land where hemp is produced;

(2) Producing hemp without a license; and

(3) Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (a) if they make reasonable efforts to grow hemp and the cannabis does not have a total THC concentration of more than 1.0 percent on a dry weight basis.

(b) *Corrective action for negligent violations.* For each negligent violation, USDA will issue a Notice of Violation and require a corrective action plan from the producer. The producer shall comply with the corrective action plan to cure the negligent violation. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

(1) The date by which the producer shall correct each negligent violation;

(2) Steps that will be taken to correct each negligent violation; and

(3) A description of the procedures that will demonstrate compliance must be submitted to USDA.

(c) *Negligent violations and criminal enforcement.* A producer who negligently violates this part shall not, as a result of that violation, be subject to any criminal enforcement action by any Federal, State, Tribal, or local government.

(d) *Subsequent negligent violations.* If a subsequent negligent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(e) *Negligent violations and license revocation.* A producer that negligently violates the license 3 times in a 5-year

period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(f) *Culpable mental state greater than negligence.* If USDA determines that a licensee has violated the terms of the license or of this part with a culpable mental state greater than negligence:

(1) USDA shall immediately report the licensee to:

(i) The U.S. Attorney General; and  
(ii) The chief law enforcement officer of the State or Indian territory, as applicable, where the production is located; and

(2) Paragraphs (a) and (b) of this section shall not apply to culpable violations.

#### **§ 990.30 USDA producers; License suspension.**

(a) USDA may issue a notice of suspension to a producer if USDA or its representative receives some credible evidence establishing that a producer has:

(1) Engaged in conduct violating a provision of this part; or

(2) Failed to comply with a written order from the USDA-AMS Administrator related to negligence as defined in this part.

(b) Any producer whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or cannabis was located at the time when USDA issued its notice of suspension, without prior written authorization from USDA.

(c) Any person whose license has been suspended shall not produce hemp during the period of suspension.

(d) A producer whose license has been suspended may appeal that decision in accordance with subpart D of this part.

(e) A producer whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension. If the license was issued more than three years prior to the date of restoration, the producer shall submit a new application and criminal history report to USDA.

(f) A producer whose license has been suspended may be required to provide, and operate under, a corrective action plan to fully restore their license.

#### **§ 990.31 USDA licensees; Revocation.**

USDA shall immediately revoke the license of a USDA licensee if such licensee:

(a) Pleads guilty to, or is convicted of, any felony related to a controlled substance; or

(b) Made any materially false statement with regard to this part to

USDA or its representatives with a culpable mental state greater than negligence; or

(c) Is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated this part three times in five years.

#### **§ 990.32 Recordkeeping requirements.**

(a) USDA licensees shall maintain records of all hemp plants acquired, produced, handled, disposed of, or remediated as will substantiate the required reports.

(b) All records and reports shall be maintained for at least three years.

(c) All records shall be made available for inspection by USDA inspectors, auditors, or their representatives during reasonable business hours. The following records must be made available:

(1) Records regarding acquisition of hemp plants;

(2) Records regarding production and handling of hemp plants;

(3) Records regarding storage of hemp plants; and

(4) Records regarding disposal and remediation of all cannabis plants that do not meet the definition of hemp.

(d) USDA inspectors, auditors, or their representatives shall have access to any premises where hemp plants may be held during reasonable business hours.

(e) All reports and records required to be submitted to USDA as part of participation in the program in this part which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one or more employees of USDA or their representatives. Confidential data or business information may be shared with applicable Federal, State, Tribal, or local law enforcement or their designee in compliance with the Act.

#### **Subpart D—Appeals**

##### **§ 990.40 General adverse action appeal process.**

(a) Persons who believe they are adversely affected by the denial of a license application under the USDA hemp production program may appeal such decision to the AMS Administrator.

(b) Persons who believe they are adversely affected by the denial of a

license renewal under the USDA hemp production program may appeal such decision to the AMS Administrator.

(c) Persons who believe they are adversely affected by the revocation or suspension of a USDA hemp production license may appeal such decision to the AMS Administrator.

(d) States and Indian Tribes that believe they are adversely affected by the denial of a proposed State or Tribal hemp plan may appeal such decision to the AMS Administrator.

##### **§ 990.41 Appeals under the USDA hemp production plan.**

(a) *Appealing a denied USDA-plan license application.* A license applicant may appeal the denial of a license application.

(1) If the AMS Administrator grants an applicant's appeal of a licensing denial, the applicant will be issued a USDA hemp production license.

(2) If the AMS Administrator denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing a denied USDA-plan license renewal.* A producer may appeal the denial of a license renewal.

(1) If the AMS Administrator grants a producer's appeal of a licensing renewal denial, the applicant's USDA hemp production license will be renewed.

(2) If the AMS Administrator denies the appeal, the applicant's license will not be renewed. The denied producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Appealing a USDA-plan license termination or suspension.* A USDA hemp plan producer may appeal the revocation or suspension of a license.

(1) If the AMS Administrator grants the appeal of a license termination or suspension, the producer will retain their license.

(2) If the AMS Administrator denies the appeal, the producer's license will be terminated or suspended. The producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(d) *Filing period.* The appeal of a denied license application, denied license renewal, suspension, or revocation must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered “filed” on the date received by the AMS Administrator. The decision to deny an appeal of a license application or renewal, or suspend or terminate a license, is final unless a formal adjudicatory proceeding is requested within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture’s Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(e) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(f) *What to include.* All appeals must include a copy of the adverse decision and a statement of the appellant’s reasons supporting why the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

#### **§ 990.42 Appeals under a State or Tribal hemp production plan.**

(a) *Appealing a State or Tribal hemp production plan application.* A State or Indian Tribe may appeal the denial of a proposed State or Tribal hemp production plan by the USDA to the AMS Administrator.

(1) If the AMS Administrator grants a State or Indian Tribe’s appeal of a denied hemp plan application, the proposed State or Tribal hemp production plan shall be established as proposed.

(2) If the AMS Administrator denies an appeal, the proposed State or Tribal hemp production plan shall not be approved. Prospective producers located in the State or territory of the Indian Tribe may apply for hemp licenses under the terms of the USDA plan. The State or Indian Tribe may request a formal adjudicatory proceeding be initiated within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture’s Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing the suspension or termination of a State or Tribal hemp production plan.* A State or Tribe may appeal the revocation by USDA of an approved State or Tribal hemp production plan.

(1) If the AMS Administrator grants a State or Indian Tribe’s appeal of a State or Tribal hemp production plan

suspension or revocation, the associated hemp production plan will remain in place and effective.

(2) If the AMS Administrator denies an appeal, the State or Tribal hemp production plan will be suspended or revoked as applicable. Producers located in that State or territory of the Indian Tribe may continue to produce hemp under their State or Tribal license until the end of the calendar year in which the State or Tribal plan’s disapproval was effective or when the State or Tribal license expires, whichever is earlier. Producers may apply for a USDA license under subpart C of this part unless hemp production is otherwise prohibited by the State or Indian Tribe. The State or Indian Tribe may request a formal adjudicatory proceeding be initiated to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture’s Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Filing period.* The appeal of a State or Tribal hemp production plan suspension or revocation must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered “filed” on the date received by the AMS Administrator. The decision to deny a State or Tribal plan application or suspend or revoke approval of a plan, is final unless the decision is appealed in a timely manner.

(d) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(e) *What to include in appeal.* All appeals must include a copy of the adverse decision and a statement of the appellant’s reasons supporting why the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

#### **Subpart E—Administrative Provisions**

##### **§ 990.60 Agents.**

As provided under 7 CFR part 2, the Secretary may name any officer or employee of the United States or name any agency or division in the United States Department of Agriculture, to act as their agent or representative in connection with any of the provisions of this part.

##### **§ 990.61 Severability.**

If any provision of this part is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the

remainder of this part or the applicability thereof to other persons or circumstances shall not be affected thereby.

##### **§ 990.62 [Reserved]**

##### **§ 990.63 Interstate transportation of hemp.**

No State or Indian Tribe may prohibit the transportation or shipment of hemp lawfully produced under a State or Tribal plan approved under subpart B of this part, under a license issued under subpart C of this part, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable.

#### **Subpart F—Reporting Requirements**

##### **§ 990.70 State and Tribal hemp reporting requirements.**

(a) *State and Tribal hemp producer report.* Each State and Indian Tribe with a plan approved under this part shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each producer covered under the applicable State and Tribal plans. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA’s information sharing systems, whenever possible. The report shall contain the information described in this paragraph (a).

(1)(i) For each new producer who is an individual and is licensed or authorized under the State or Tribal plan, the report shall include the full name of the individual, license or authorization identifier, Employee Identification Number (“EIN”) of the business entity, business address, telephone number, and email address (if available).

(ii) For each new producer that is an entity and is licensed or authorized under the State or Tribal plan, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history report.

(iii) For each producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.

(2) The status of each producer’s license or authorization.

(3) The period covered by the report.

(4) Indication that there were no changes during the current reporting cycle, if applicable.

(b) *State and Tribal hemp disposal or remediation report.* If a producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of or remediated. States and Tribes with plans approved under this part shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal or remediation record of those plants and materials. This report would include information regarding name and contact information for each producer subject to a disposal or remediation during the reporting period, and date disposal or remediation was completed. If the first of the month fall on a weekend or holiday, reports are due by the first business day following the due date. The report shall contain the information described in this paragraph (b).

- (1) Name and address of the producer.
- (2) Producer license or authorization identifier.
- (3) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation.
- (4) Disposal or remediation completion date.
- (5) Total acreage.

(c) *Annual report.* Each State or Indian Tribe with a plan approved under this part shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

- (1) Total planted acreage.
- (2) Total harvested acreage.
- (3) Total acreage disposed and remediated.

(d) *Test results report.* Each producer must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results to USDA. Informal testing conducted throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain:

- (1) Producer's license or authorization identifier.
- (2) Name of producer.

- (3) Business address of producer.
- (4) Lot identification number for the sample.
- (5) Name of laboratory and, no later than December 31, 2022, the DEA registration number of laboratory for testing.
- (6) Date of test and report.
- (7) Identification of a pre-harvest or post-harvest retest.
- (8) Test result.

#### **§ 990.71 USDA plan reporting requirements.**

(a) *USDA licensing application.* USDA will accept applications on a rolling basis. Licenses will be valid until December 31 of the year three years after the license is issued. The license application will be used for both new and renewal applicants. The application shall include:

(1) *Contact information.* (i) For an applicant who is an individual, the application shall include full name of the individual, Employee Identification Number ("EIN") of the business entity, business address, telephone number, and email address (if available).

(ii) For an applicant that is an entity, the application shall include full name of the entity, the principal business location address, and the full name, title, and email address (if available) of each key participant of the entity.

(2) *Criminal history report.* As part of a complete application, each applicant shall provide a current Federal Bureau of Investigation's Identity History Summary. If the applicant is a business entity, a criminal history report shall be provided for each key participant.

(i) The applicant shall ensure the criminal history report accompanies the application.

(ii) The criminal history report must be dated within 60 days of submission of the application submittal.

(3) *Consent to comply with program requirements.* All applicants submitting a completed license application, in doing so, consent to comply with the requirements of this part.

(b) *USDA licensee disposal and remediation form.* USDA licensee conducts a disposal or remediation activity, that licensee must report the activity on the appropriate form to

USDA no later than 30 days after the date of completion of disposal or remediation activity. The report shall contain the information described in this paragraph (b).

- (1) Name and address of the producer.
- (2) The USDA licensee's USDA license number.
- (3) Geospatial location, or other valid land descriptor, for the production area subject to disposal or remediation.
- (4) Date of completion of disposal or remediation.
- (5) Signature of the USDA licensee or authorized representative.

(c) *USDA licensee annual report.* Each USDA licensee shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

- (1) USDA licensee's license number.
- (2) USDA licensee's name.
- (3) USDA licensee's address.
- (4) Lot, location type, geospatial location, total planted acreage, total acreage disposed and remediated, and total harvested acreage.

(d) *Test results report.* Each USDA licensee must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to USDA. Informal testing conducted throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain the information described in this paragraph (d) for each sample tested.

- (1) USDA licensee's license number.
- (2) Name of the USDA licensee.
- (3) Business address of the USDA licensee.
- (4) Lot identification number for the sample.
- (5) Name of testing laboratory.
- (6) Date of test and report.
- (7) Identification of a pre-harvest or post-harvest retest.
- (8) Test result.

**Bruce Summers,**  
Administrator, Agricultural Marketing Service.

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**BILLING CODE P**

## CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

2. "Genetically engineered" means the genetic modification of organisms by recombinant DNA techniques, including genetic combinations resulting in novel organisms or genetic combinations that would not naturally occur.
  3. "Organisms" means any active, infective, or dormant stage or life form of any entity characterized as living, including vertebrate and invertebrate animals, plants, bacteria, fungi, mycoplasmas, mycoplasma-like organisms, as well as entities such as viroid, viruses, or any entity characterized as living related to the foregoing.
  4. "Permit" means an application which has been approved by USDA and the Department.
  5. "Permit application" means an application filed with USDA, which may be supplemented with requirements from the Department, for the introduction of genetically engineered organisms and products, as provided by 7 CFR 340, revised June 16, 1987. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
  6. "Product" means plant reproductive parts including pollen, seeds, and fruit, spores, or eggs.
  7. "USDA" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA, APHIS, PPQ).
- B. Permit applications.** A genetically engineered organism or product shall not be introduced into Arizona, sold, offered for sale, or distributed for release into Arizona's environment unless a permit issued pursuant to the application has been issued by USDA, or the Department has been notified by the USDA that the genetically engineered organisms or product is eligible under the notification procedure, as prescribed by 7 CFR § 340.3, revised August 6, 2007, or it has been determined by the USDA to be of nonregulated status, as prescribed by 7 CFR 340.6, revised May 1997. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
1. Applicants for the release or use of genetically engineered organisms or products shall follow all permit application procedures required by USDA.
  2. In addition to USDA's requirements, permit applications shall demonstrate to the Department that:
    - a. Genetically engineered organisms or products shall be handled in such a manner so that no genetically engineered organism or product accidentally escapes into Arizona's environment.
    - b. All permit applicants shall comply with Arizona quarantine rules regulating the plants, pests, or organisms being introduced into Arizona.
  3. The Department may, if it deems necessary to protect agriculture, public health, or the environment from potential adverse effects from the introduction of a specific genetically engineered organism or product:
    - a. Place restrictions on the number and location of organisms or products released, method of release, training of persons involved with the release of organisms or products, disposal of organisms or products, and other conditions of use;
    - b. Require measures to limit dispersal of released organisms or spread of inserted genes or gene products;
    - c. Require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products;
- d. Request the USDA to deny, suspend, modify, or revoke the permit for failure to comply with this rule.
  - e. Request the USDA to suspend the permit if it is determined that an adverse effect is occurring or is likely to occur because of a release authorized by such permit.
4. To the extent possible, the Department shall accept for review and base its decision on the data submitted with the federal application. However, the Department may request additional information from the applicant to assess the risks to animals and plants, including risks of vector transmissions of genetically engineered organisms or products.
  5. The Associate Director shall review the application recommendations with the Director who shall, within the time period prescribed on each USDA application, approve, conditionally approve, or deny the permit.
  6. The Director shall return the completed application with the resolution to USDA for final action.

**Historical Note**

Adopted effective November 22, 1993 (Supp. 93-4).  
Amended by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

**ARTICLE 10. INDUSTRIAL HEMP****R3-4-1001. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-201, 3-311, and R3-4-101, the following terms apply to this Article.

"0.300%" shall have the same meaning as three-tenths percent.

"Associate Director" means the Associate Director of the Plant Services Division.

"Certified laboratory" means the State Agriculture Laboratory or any laboratory certified by the State Agriculture Laboratory to perform compliance analysis of industrial hemp.

"Hemp" has the same meaning as industrial hemp.

"Intentionally" means the state of mind defined in A.R.S. § 13-105(10)(a) or any successor statute.

"Knowingly" means the state of mind defined in A.R.S. § 13-105(10)(a) or any successor statute.

"Licensing Agreement" means a contract between the Department and an applicant that indicates the terms and conditions required for a license issued pursuant to this Article.

"Manmade causes" means the influence to an industrial hemp crop created by a person, including but not limited to, irrigation, fertilization, chemical application, or physical interference.

"Natural causes" means the influence to an industrial hemp crop created by elements of nature including, but not limited to, temperature, wind, rain, hail, or flood.

"Program" means the Industrial Hemp Program.

"Propagative material" means any industrial hemp seedlings, explants, transplants, propagules, or other rooted material that is grown in a soilless media.

"Responsible party" means an individual that has signing authority of a partnership, limited liability company, association, company or corporation.

"THC" means Tetrahydrocannabinol.

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“Total Delta-9 THC concentration” means the total calculable amount of the chemical compound, Delta-9 THC.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1002. Program Eligibility**

- A.** Eligibility requirements. Unless otherwise determined to be ineligible under this Article and not withstanding any other law, a person or responsible party that applies for a program license or registration shall:
1. Possess a valid fingerprint clearance card issued by the Arizona Department of Public Safety pursuant to A.R.S. § 41-1758.07.
  2. Be a citizen of the United States or a legal resident alien, an individual who applies for a program license, is enrolled in an academic program at an accredited college or university, and does not meet the criteria in this Section may be sponsored by an academic member of that college or university who meets the eligibility criteria in this Section and provides proof of eligibility as required in subsection (B)(2).
  3. Be eighteen (18) years of age or older at the time of application.
- B.** Proof of eligibility.
1. The Department shall accept a legible photo copy, paper or electronic, of the applicants fingerprint clearance card described in subsection (A)(1).
  2. The Department shall accept the documents listed in A.R.S. § 41-1080(A) as evidence of age and United States Citizenship or legal residency.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1003. Licenses; Applications; Renewals; Withdrawal**

- A.** Any person that grows, harvests, transports, or processes industrial hemp in any of the following categories shall obtain the appropriate license from the Department and shall abide by the terms and conditions set forth in the licensing agreement with the Department. Types of licenses include:
1. Grower - An authorized Grower license shall allow the licensee to obtain seed or propagative materials pursuant to this Article for planting, possess authorized seed and/or propagative materials for planting, cultivate the crop, harvest plant parts, possess and store harvested plant parts, and transport plant parts for processing.
  2. Nursery - An authorized Nursery license shall allow the licensee to propagate eligible seed and propagative materials for planting for a licensed grower. A licensed Nursery shall not grow industrial hemp for harvesting purposes, unless also licensed with the Department as a Grower.
  3. Harvester - An authorized Harvester license shall allow the licensee to engage in the activity of harvesting an eligible industrial hemp crop for a licensed grower.
  4. Transporter - An authorized Transporter license shall allow the licensee to engage in the transport of a harvested industrial hemp crop for a licensed grower.
  5. Processor - An authorized Processor license shall allow the licensee to engage in the processing, handling, and storage of industrial hemp or hemp seed at one or more authorized locations in the state. The licensee may sell, distribute, transfer, or gift any products processed from harvested hemp that is not restricted in R3-4-1012.
- B.** At a minimum, applications for a license shall contain the information required in subsections R3-4-1003(B)(1) through (6), plus any additional information that may be required by the Department. Location information shall be retained by the Department for not less than three years. Licensing fees are due at the time of application (R3-4-1005).
1. All licenses.
    - a. Full name, mailing address, telephone number and email address;
    - b. Fingerprint clearance card identification number of the person or responsible party applying;
    - c. If the applicant represents a business entity, the full name of the business, the principal Arizona business location address, the full name, title, and email address of the of the responsible party;
    - d. Tax ID or Social Security Number; and
    - e. Disclosure and explanation of any instance in which the applicant has been denied, debarred, suspended, revoked, or otherwise prohibited from participating in any public procurement or licensing activity.
  2. Grower’s license.
    - a. Registered planting site or sites: street address or major crossroads, legal description, and GPS coordinates for each field, greenhouse, building or site where industrial hemp will be grown, updated annually, or within 30 days following a change;
    - b. Estimated acreage for each outdoor location and/or square footage for indoor or each greenhouse locations intended for planting;
    - c. Maps or aerial photos depicting each site where industrial hemp will be grown, handled, and/or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the GPS coordinates;
    - d. Storage location or locations (expressed in GPS coordinates) for seed or propagative materials, and harvested plants and plant parts; and
    - e. Maps or aerial photos depicting each site where industrial hemp seed and/or propagative materials will be stored and labeled with the corresponding GPS coordinates;
  3. Nursery License.
    - a. Storage location or locations (expressed in GPS coordinates) for seed or propagative materials;
    - b. Locations (expressed in GPS coordinates) of all propagation areas; and
    - c. Labeled maps or aerial photos depicting storage and propagation areas.
  4. Harvester License. Maps and the street address, legal description, and GPS coordinates for each location the harvesting equipment will be primarily based.
  5. Transporter License. Maps and the street address, legal description, and GPS coordinates for each location the transporting vehicles and equipment will be primarily based.
  6. Processor License.
    - a. Identification of the part of a harvested hemp crop or plant to be received for processing, in the following categories:
      - i. Floral and leaf material;
      - ii. Seed for oil or grain;
      - iii. Stalks for fiber or hurds;
      - iv. Seed or propagative materials for planting;
    - b. Registered processing site or sites: Street address or major crossroads, legal description, and GPS coordinates for each building or site where hemp will be

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- processed or stored; or where mobile processing equipment will be primarily based; and
- c. Labeled maps or aerial photos depicting the information in subsection (b).
- C. Application submission dates. Applications may be submitted at any time during the year, but the expiration date of the license shall be on December 31st annually, or biennially for a two-year renewal as authorized in subsection (D). Renewal applications will be due no later than December 15th.
- D. Application for one or two-year renewals. At a licensee's discretion, a person that has been licensed by the Department under the industrial hemp program may apply for a one or two year renewal provided:
1. The person was licensed in the industrial hemp program within the previous calendar year;
  2. The license of the person was in good standing at the time of renewal;
  3. There is no change in the person or responsible party licensed;
  4. There is no change in the physical location of the industrial hemp site;
  5. The licensee does not owe any civil penalties, fees, or late charges to the Department; and
  6. The person submits the associated fee for a one or two-year renewal.
- E. Licensing agreements. All approved applicants for a license shall complete a licensing agreement issued by the Department prior to receiving a license. The licensing agreement may include additional terms and conditions as needed to ensure compliance with this Article, applicable state and federal laws, and rules and orders of the Director, but, at a minimum the applicant will agree to:
1. Provide access, for authorized Department inspectors, at any time, to all hemp and hemp seed, planted or stored, and all records to determine compliance with this Article and any state or federal law, rule or order regulating *Cannabis* as an agricultural crop;
  2. Maintain all records, as stated in R3-4-1008 of this Article;
  3. Pay all fees required indicated in Table 1 of this Article;
  4. Comply with all pesticide use restrictions;
  5. Comply with all seed laws of the state;
  6. Defend, indemnify, and hold harmless the Department from liability for the destruction of any crop or harvested plant in violation of this Article;
  7. Be solely responsible for all financial or other losses;
  8. Be solely responsible for all land use restrictions, applicable city and county zoning, building, and fire codes and ordinances; and
  9. Follow all regulatory, notification and reporting requirements.
- F. Program withdrawal. A licensee that intends to voluntarily withdraw from the program shall submit to the Department a withdrawal notice as prescribed by the Department and comply with the following conditions.
1. Unless otherwise authorized by the Associate Director, the licensee shall complete a withdrawal notice at least two weeks prior to withdrawal of the program;
  2. Any industrial hemp or hemp seed, planted, harvested, or stored must be inspected by the Department prior to transport off of the property, destruction or transfer to a new or existing licensee;
  3. Any licensing and inspection fees paid or invoiced prior to any notice of withdrawal are not eligible for refund; and
4. Withdrawal after submittal of an application but prior to issuance of a license will be prohibited unless the Department determines, in its sole discretion, that such withdrawal is appropriate.
- G. Site modification. Anytime a licensed grower, processor or nursery modifies the registered site during the licensing period by changing the location of an existing site or by adding additional sites under the license, the licensee shall submit a site modification application and associated site modification fee listed in Table 1 of this Article.
- H. License transfer. The transfer of an Industrial hemp license is authorized only if the licensee and eligible program applicant completes a Department issued transfer application and submits any applicable transfer fees listed in Table 1 of this Article. The receiver of a transferred license shall complete a licensing application, and execute a licensing agreement as required by this Article, and all duties and responsibilities of the licensee shall be transferred to and acknowledged by the receiver in a written agreement between the licensee and receiver. Any license or other fees paid by the licensee shall be credited to the benefit of the receiver.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1004. Industrial Hemp Research**

- A. A person, company, college or university that conducts research into the growth, harvesting techniques, transportation methods, or processing of industrial hemp is required to obtain a license pursuant to this Article.
- B. A person, company, college or university conducting not-for-profit research may be exempted from the licensing fee or licensing fees provided:
1. The applicant submits to the Department a request for an exemption of the licensing fee;
  2. The applicant provides a summary of the research to be conducted;
  3. The applicant provides a summary of the benefit to the agricultural community that will be gained;
  4. The applicant signs into an agreement with the Department that as a result of the research conducted the applicant will not gain any monetary profit;
  5. The research will be conducted in compliance with this Article or any other law, rule, or order governing the production of industrial hemp; and
  6. The results or summary of the research will be published or made publicly available.
- C. Intellectual property. The Department holds no rights to any intellectual property of the licensee.
- D. Restrictions. A licensee shall not change not-for-profit research to for-profit research without notifying the Department and paying the required licensing fee.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1005. Fees**

- A. All licensing and/or registration fees are due at the time of application.
- B. A Grower applicant or licensee is not required to pay separate harvester and/or transporter licensing fees, unless providing harvesting and/or transport services for other licensed growers.
- C. Inspection and assessment fees are invoiced by the Department and are due within 30 days of the invoice date.

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- D. Site modification fees. The appropriate fee shall be submitted at the time an applicant submits a site modification application as provided in R3-4-1003(G).
- E. Processor Assessment fees are based on tonnage reports, shipping manifests or scale receipts of unprocessed hemp plants or plant parts received.
- F. All outstanding Inspection and Assessment fees invoiced prior to November 15th, shall be paid in full prior to the Department's processing of a licensee's renewal application.
- G. THC sample analysis fees. A licensee will be invoiced for any analytical fees beyond the samples selected to determine regulatory compliance. These include:
  1. Any pre-harvest re-samples for crops that indicated a result above the threshold for compliance;
  2. Post-harvest samples that have been determined to be a regulatory concern by the Department; or
  3. By request from the grower that requires official analysis for commerce.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**Table 1. Fee Schedule**

License	Licensing Fee	Inspection/Assessment Fee
Grower	\$1,000 per license	\$25 per one or less than one outdoor acre up to 100 acres \$5 acre for each additional acre \$75 per indoor facility up to 3 acres; \$25 per acre for facilities over 3 acres \$150 per THC sample analysis (G)
Nursery	\$650 per license	NA
Harvester	\$100 per license	N/A
Transporter	\$100 per license	N/A
Processor	\$2,000 per license	\$5 ton Oil Seed/Grain \$100 ton floral material \$150 per THC sample analysis (G)
All	Site modification fee: \$300	N/A

**Historical Note**

New Table 1. Fee Schedule made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2). Table 1. Fee Schedule amended by emergency rulemaking at 27 A.A.R. 39, with an immediate effective date of December 17, 2020 (Supp. 20-4).

**R3-4-1006. Authorized Seed and Propagative Material**

- A. Authorized seeds and propagative material. Seeds and propagative materials authorized for use by a licensee is not a guarantee a crop will produce a Total Delta-9 THC concentration of not greater than 0.300%. Seeds and propagative material that are used to produce an industrial hemp crop or plant shall:
  1. Be produced from an industrial hemp crop or plant; and
  2. Originate from either:
    - a. A person, business, college or university licensed or certified in a state or federal program authorized to produce industrial hemp; or
    - b. A foreign source that is authorized by the country of origin to export industrial hemp seed or propagative material to produce an industrial hemp crop.
- B. Each licensed grower or nursery is responsible for the acquisition of seed or propagative materials used for the growth of industrial hemp. The licensee shall provide the Department the following information prior to planting:
  1. A copy of the seed or propagative material producer's certificate, license or equivalent documentation authorizing the production of industrial hemp;
  2. An official analysis of the crop or plant that produced the seed or propagative material that indicates the crop or plant contained a Total Delta-9 THC concentration of not greater than 0.300% on a dry weight basis;
  3. Phytosanitary certificates or nursery certificates issued by a plant regulatory official for any propagative materials to ensure compliance with A.R.S. § 3-211 and 3 A.A.C. 2; and
  4. A pre-planting report, on a form provided by the Department, which includes:
    - a. The variety/strain name of the material;
    - b. The amount or quantity of the material;
    - c. The lot number or numbers of the material; and
    - d. The name, address, phone number and email address of the seed or propagative material provider.
- C. Labeling requirements. All Industrial Hemp seed or propagative material sold within or into Arizona must be labeled as to variety/strain or hybrid name, and origin. Labelers of seed or propagative material must provide to the Department, breeder descriptions and variety release information including any subsequent updates/amendments to these descriptions.
  1. For purposes of labeling, the number or other designations of hybrid industrial hemp shall be used as a variety name.
  2. All Industrial Hemp seed for planting purposes sold within or into Arizona is subject to the Arizona seed laws under A.R.S. §§ 3-231 et seq. and this Chapter.
- D. Restrictions.
  1. A person that receives seed or propagative materials that does not comply with this Article or any other phytosanitary, seed or labeling law of the state shall immediately notify the Department and hold the seed or propagative material until a disposition is provided by the Department.
  2. The Department may direct a licensee to place a shipment of seed or propagative material on hold to ensure compliance with this Article and any other law or regulation that may apply to the shipment of agricultural seed and plants for planting purposes.

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**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1007. Location Requirements; Signage**

- A.** Location requirements.
1. A Licensed Grower or Processor shall not grow, process, or store industrial hemp in any residential dwelling.
  2. A Licensee is responsible for maintaining compliance with all applicable city and county land use restrictions, zoning laws, building, and fire codes and ordinances.
  3. A registered location shall be made available for inspection at the request of an inspector during normal business hours.
  4. A licensed grower or processor shall not grow, process, or store any forms of *Cannabis* that are not classified as industrial hemp within a single structure at the registered location.
- B.** Signage. A licensed grower or processor shall conspicuously post signage at the perimeter of the registered location that includes the following information:
1. The statement, "Arizona Department of Agriculture Industrial Hemp Program - No Trespassing Allowed";
  2. Licensee's name and license number; and
  3. The Arizona Department of Agriculture, Industrial Hemp Program phone number.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1008. Compliance; Recordkeeping; Audits**

- A.** General compliance requirements.
1. All licensees are subject to audits to ensure compliance with the recordkeeping requirements in subsection (B);
  2. An authorized Department inspector shall be allowed access to all growing, storage, and processing locations of a licensee's industrial hemp crop, hemp seed, propagative material, harvested material, handling and processing equipment to conduct a visual inspection and determine if a violation of this Article may exist.
- B.** Recordkeeping. All licensees may be audited to ensure compliance with all recordkeeping requirements. A licensee shall comply with the recordkeeping requirements in this subsection at a minimum. Additional recordkeeping requirements may be established as set in policy and updated annually.
1. All records documenting the growth, propagation, harvesting, storage, agronomic data, shipping, receiving, transportation, distribution, processing, sale, purchase, third party analysis or research of all plants, seeds and materials shall be kept within the state of Arizona and made available for inspection on request.
  2. An in-state agent must be maintained for receipt and storage of records.
  3. All records shall be maintained for not less than five years.
- C.** Sampling and testing. All licensees are subject to the collection of a representative sample of any *Cannabis* plant, hemp crop or harvested hemp in possession of the licensee or licensee's agent to determine the total concentration of Delta-9 THC as reported by a certified laboratory to ensure compliance with this Article and any state or federal law, rule or order regulating *Cannabis* as an agricultural commodity.
1. Sampling method. The Department shall publish a policy on the methods in which a *Cannabis* plant or crop may be sampled, which may be updated annually as needed.
  2. Only an authorized Department inspector may collect an official sample to determine compliance with this Article.

3. When collecting an official sample, an authorized Department inspector shall:
    - a. Collect a representative sample of the crop, plants or harvested crop;
    - b. Split the official sample as follows:
      - i. One-third for retention by the Department or to provide to a certified laboratory for compliance with this Article;
      - ii. One-third for confirmation of analytical results if required; and
      - iii. One-third that is provided to the licensee for retention or to utilize for additional analysis by a third party laboratory. Any results provided to the licensee by a third party laboratory do not supersede official results.
    - c. Label all official samples with an official sample number, sample date, collector name, location ID, and grower license ID number;
    - d. Apply official custody seals to all official samples; and
    - e. Complete an official chain of custody form that is signed and dated by the inspector and licensee or the licensee's representative.
  4. Sample transport and submission. The Department shall not be liable for samples that are detained by any federal, state or local law enforcement agency.
    - a. If a certified laboratory receives a sample with a broken custody seal or incomplete or missing chain of custody, that sample shall be null and void;
    - b. All official samples retained by the Department are the property of the Department; and
    - c. The Department is not liable to reimburse the licensee for official samples collected.
  5. Sample results. Any result provided to the Department by a certified laboratory is the property of the state and a copy shall be provided to the licensee.
- D.** Volunteer hemp plants. It shall be the responsibility of the licensee to monitor and destroy.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1009. Reserved****Historical Note**

Section reserved at 25 A.A.R. 1447 (Supp. 19-2).

**R3-4-1010. Reserved****Historical Note**

Section reserved at 25 A.A.R. 1447 (Supp. 19-2).

**R3-4-1011. Notifications; Reports**

- A.** All notifications and reports for licensees shall be made on forms provided by the Department unless otherwise indicated in this Section or as directed by the Associate Director.
- B.** Grower Licensees shall notify the Department of the following activity:
1. Notice of intent to harvest no less than 14 days prior to harvest;
  2. Intent to transport a harvested crop no less than 72 hours prior to shipment or transport;
  3. Notify the Department of any significant damage or destruction of a crop or harvested crop caused by natural or manmade causes within 48 hours of discovery of the damage or destruction; and

## CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

4. Notify the Department within 14 days if any change in business information including business name, address, contact information or responsible party.
- C. Planting report. Within 7 days after planting, complete and submit a planting report that includes:
  1. The Growers license number;
  2. The location or locations where a crop was planted (the "site"), expressed in GPS Coordinates and displayed on a map or aerial photo;
  3. The variety name or names of each planting corresponding to the location indicated in subsection (C)(2); and
  4. The actual area planted of each site.
- D. Grower and nursery reports. By December 31st of each year, a grower or nursery shall provide the Department a report of the following:
  1. The sale or distribution of any industrial hemp grown under the grower's license;
  2. The name and address of the person or entity receiving the industrial hemp; and
  3. The amount of the industrial hemp sold or distributed.
- E. Processor notifications. A licensed processor shall notify the department of all shipments of industrial hemp imported from outside of the state for processing within 72 hours of receipt of the shipment. The notification shall include:
  1. A copy of the shipping manifest that indicates the name, physical address, and phone number of the shipper, and the total weight of the hemp commodity in the shipment;
  2. A copy of the documentation issued by a regulatory official that attests the hemp commodity contains a Total Delta-9 THC Concentration not greater than 0.300%; and
  3. A copy of the industrial hemp grower's certificate, license or equivalent documentation authorizing the production of industrial hemp in that state;
  4. A phytosanitary certificate or certificate of inspection issued by a plant regulatory official; and
  5. Documentation issued at origin that attests to the owner, origin, type and amount of hemp material in the shipment.
- F. Other notifications. A licensee shall notify the Department within 72 hours from receipt of results of any third party analysis that determined a hemp crop or plant sample contained a Delta-9 THC concentration greater than 0.300%.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1012. Unauthorized Activity; Violations**

- A. A licensee shall have committed a violation of this Article by:
  1. Failing to provide a legal description of land on which a licensee grows, processes, stores or researches industrial hemp or hemp seed;
  2. Failing to obtain the proper license with the Department;
  3. Producing or distributing *Cannabis sativa*, with a total Delta-9 THC concentration greater than 0.300% on a dry weight basis, unless otherwise permitted by state or federal law, rule or order;
  4. Violating a term or condition of the signed licensing agreement or corrective action plan; or
  5. Violating any law, rule, or order in the regulation of industrial hemp.
- B. False Statement. Any person who materially falsifies any information contained in an application to participate in the program established under this Article shall be ineligible to participate in the program.
- C. No unauthorized person shall:
  1. Grow, cultivate, handle, store, harvest, transport, import or process industrial hemp;
  2. Trespass on a property registered as an industrial hemp site;
  3. Disturb, damage or destroy an industrial hemp plant or crop on a registered location; or
  4. Tamper, damage or destroy posted signage as required under R3-4-1008.
- D. No authorized program licensee shall:
  1. Offer for sale, trade, transfer possession of, gift, or otherwise relinquish possession of industrial hemp plants, plant parts, or hemp seed that is capable of germination to an unauthorized person;
  2. Destroy an industrial hemp crop, stored industrial hemp or hemp seed without prior notification to the Department.
  3. Transport industrial hemp plants, seed, propagative material or unprocessed harvested industrial hemp without notifying the Department; or
  4. Import or export industrial hemp plants or plant parts for processing; seed or propagative material for planting purposes without notifying the Department and complying with all import or export regulatory requirements as determined by a regulatory official.
- E. Intentional or Knowing Violations. Any violation that is determined to be committed intentionally or knowingly shall be reported to the State Attorney General and any relevant state and local law enforcement agencies.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1013. Corrective Actions**

- A. In addition to being subject to possible license suspension, license revocation, and monetary civil penalty procedures set forth in R3-4-1014, a person who is found by the Department to have violated any law, rule or Director's Order governing that person's participation in the program shall be subject to a corrective action plan.
- B. The Associate Director may impose a written and dated corrective action plan for a negligent violation of any law, rule or Director's Order governing a person's participation in the hemp program.
- C. Corrective action plans issued by the Department shall include, at a minimum, the following information:
  1. The requirements a person must fulfill to correct a violation of this Article as indicated in subsection (D);
  2. A reasonable date by which the person shall complete violation corrections; and
  3. A requirement for periodic reports from the violator to the department about the violator's compliance with the corrective action plan, laws, rules or Director's Orders for a period of at least three years from the date of the corrective action plan.
- D. Corrective Action Plan. The Department may prescribe one or more of the following provisions to a person in violation of this Article.
  1. Hemp crops or harvested hemp shall not be removed from the licensee's registered hemp site if found in violation of R3-4-1012 (A)(3) by having a Total Delta-9 THC concentration of greater than 0.300% on a dry weight basis.
  2. In addition to one or more of the components listed in A.R.S. § 3-317, a corrective action plan may contain one or more of the requirements:
    - a. Stripping stalks and destruction of floral material;

## CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

- b. Sterilization of seed and destruction of floral material;
  - c. THC remediation of leaf and floral material as prescribed by the Associate Director;
  - d. Education and training; and/or
  - e. Other corrective measures prescribed by the Associate Director.
3. Failure to complete the prescribed corrective measure within the timeframe indicated in the corrective action plan or to complete any component of a corrective action plan shall constitute a second violation of this Article.
  4. The cost of implementing a corrective action plan is the burden of the licensee.
- E.** Repeat violations. A person that violates this Article, the laws governing the production of industrial hemp, or any order issued by the Associate Director three times in a five-year period shall be ineligible for license issued by the Department for a period of five years beginning on the date of the third violation.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).

**R3-4-1014. Penalties**

- A.** Civil penalties. A person that violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department within a five year period may be fined as follows:

1. First offense - \$1,000;
  2. Second offense - \$2,500;
  3. Third offense - \$5000.
- B.** License suspension. A person that violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department may have their licensing privileges suspended until completion of any corrective actions prescribed in R3-4-1013.
- C.** License revocation. A person that intentionally violates this Article, a licensing requirement, a licensing term or condition, or any other rule or order of the Department, or who commits a third offense within a five year period:
1. Shall have all licenses issued pursuant to this Article revoked;
  2. All hemp crops, seed, and harvested industrial hemp of the licensee shall be seized and destroyed as prescribed by the Associate Director;
  3. The person found in violation shall be responsible for the cost of the destruction of all hemp crops, seed, and harvested material; and
  4. The person in violation shall not be eligible for a license under this Article for a period not less than five years.
- D.** Intentional or knowing violations shall be punished according to A.R.S. §§ 3-319 and or 13-3405.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 1447, effective May 31, 2019 (Supp. 19-2).



Brian McGrew &lt;bmcgrew@azda.gov&gt;

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**Re: Rule Change Comments for hemp**

1 message

**Brian McGrew** <bmcgrew@azda.gov>

Tue, Jun 1, 2021 at 11:00 AM

To: Robert Shatz &lt;rshatz@flexintl.com&gt;

Cc: AZ Hemp &lt;azhemp@azda.gov&gt;, Adam Brimley &lt;brimley76@yahoo.com&gt;, Alan Thomas &lt;Advisor@gtreegroup.com&gt;, David Vernon &lt;vdpphd@yahoo.com&gt;, Doug Fant &lt;dfantlaw@earthlink.net&gt;, Rich Alsup &lt;jandrntimber@gmail.com&gt;, Robert Hennkens &lt;rhennkens@gmail.com&gt;, Robert Shatz &lt;rshatz@flexintl.com&gt;, Ronaldiño Larzelere &lt;ft.apacherestoration@yahoo.com&gt;, Steven Hall &lt;stevenwaynehall@gmail.com&gt;

Greetings,

Thank you for providing comment regarding the proposed rulemaking for the industrial hemp program. This email is in response to the comments provided.

The Department will not be removing the hemp rules as suggested for several reasons, including but not limited to: (1) the production, sale, interstate movement and use of marijuana is not legal at the federal level, and industrial hemp is only legal if a program follows the requirements under the 7 CFR part 990; (2) hemp laws were established so there would be no interference with the strict regulation of marijuana in this state, which is much more stringent and burdensome than hemp regulatory oversight; (3) hemp is a commodity that does not contain the same amount of psychoactive compound as marijuana (tetrahydrocannabinol or THC), and the hemp industry is governed by federal laws requiring strict regulatory oversight to enough THC to be illegal under federal law. The Department will not be removing the hemp laws for three reasons. 1) The production, sale, interstate movement or use of Marijuana is not legal at the Federal level, as opposed to industrial hemp under the 7 CFR part 990. 2) Hemp laws were established so there would be no interference with the strict regulation of marijuana in this state (A.R.S. 3-321). If the hemp laws were removed and regulated under the same framework for marijuana, stakeholders would face much more stringent regulatory oversight. 3) Hemp is a commodity that does not contain the psychoactive compound Tetrahydrocannabinol (THC) greater than 0.3%. This requires regulatory oversight to ensure compliance with this distinct factor.

Regards,

Brian

Brian McGrew

Industrial Hemp Program Manager

Arizona Department of Agriculture

Environmental and Plant Services Division

1688 West Adams Street

Phoenix, AZ 85007

[bmcgrew@azda.gov](mailto:bmcgrew@azda.gov)

Office: 602-542-3228

Fax: 602-542-1004



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On Mon, Apr 19, 2021 at 10:21 AM Robert Shatz <[rshatz@flexintl.com](mailto:rshatz@flexintl.com)> wrote:

Monday, April 19, 2021

Arizona Department of Agriculture

Hemp Division

Phoenix, Arizona

To Whom It May Concern:

Thank you for allowing GrowFast Farms, Inc. to comment on the proposed changes to the hemp laws in the State of Arizona.

With the legalization of recreational cannabis in the State of Arizona, and with the THC being the main difference between cannabis and hemp, now hemp regulation become moot.

Ironically, now that it is legal to grow THC plants, hemp has become more regulated than cannabis. While the law was meant to protect us against THC, now the hemp laws are putting an undo regulatory burden on hemp growers, processors, and transporters.

In conclusion, there is something wrong with the existing formula. Please scrap the Hemp Laws or conform them to the new State recreational marijuana laws.

Respectfully submitted,

Robert Shatz

Chief Executive Officer

GrowFast Farms, Inc.

(520) 256-1522

[rshatz@flexintl.com](mailto:rshatz@flexintl.com)



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**DEPARTMENT OF PUBLIC SAFETY**

Title 13, Chapter 12, Article 1, Private Investigator and Security Guard Hearing Board



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 10, 2021

**SUBJECT:** Department of Public Safety  
Title 13, Chapter 12 - Private Investigator and Security Guard Hearing Board

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This Five-Year-Review Report (5YRR) from the Department of Public Safety relates to rules in Title 13, Chapter 12, regarding the Private Investigator and Security Guard Hearing Board.

In the last 5YRR of these rules, the Department proposed to amend one of its rules, to be consistent with statute. The Department did not complete the changes, but is currently not reviewing the rule in order to let it expire pursuant to A.R.S. 41-1056 (J).

### **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 Department cites to both general and statutory authority.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy. The primary economic burden results from the statutes creating the Board and requiring the Board to hold hearings regarding an application for a good-cause exception. The only economic burden imposed by the rules results from the information an applicant is required to submit for a good-cause exception. However, the Board does not enforce this requirement. Additionally, an applicant chooses to submit information voluntarily in hope of reaping the economic benefit of being licensed and employed as a private investigator or security guard if the Board grants a good-cause exception.

Stakeholders include: the Board and applicants seeking good-cause exception from the Board.

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

The Department determined that the public safety benefits of the rules outweigh the costs to the State and impose the least burden and cost to the regulated industry.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are overall enforced as written with the exception of the following:

**R13-12-103** - Application for a Good-cause Exception

**R13-12-104** - Hearing on a Good-cause Exception

**R13-12-105** - Vacating, Rescheduling, or Continuing a Hearing

**R13-12-106** - Telephonic Testimony

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

Not applicable, there are no corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a general permit.

11. **Conclusion**

As mentioned above, the Department is currently not proposing any changes to the rules.

While Council staff recommends approval of this report, staff encourages the Council to further discuss the current enforcement of rules; R13-12-103, 104, 105 and 106. For the reasons mentioned in the report, the Department indicates the rules that are not enforced as written. Amending the rules to accurately reflect the Department's processes, would result in rules that are more clear, concise, understandable, and less burdensome.

May 20, 2021

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

Ms. Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Department of Public Safety 13 A.A.C. 12 *PRIVATE INVESTIGATOR  
AND SECURITY GUARD HEARING BOARD* Five-Year Review Report**

Dear Ms. Sornsin:

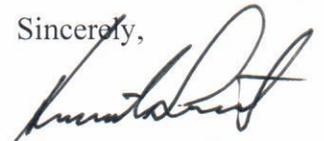
Please find enclosed the Five-Year Review Report of the Department of Public Safety for 13 A.A.C. 12, *Private Investigator and Security Guard Hearing Board* which is due by July 31, 2021.

The Department did not review R13-12-102 with the intention that rule expire under A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mr. Paul Swietek, Research and Planning Unit at 602-223-2049 or [pswietek@azdps.gov](mailto:pswietek@azdps.gov).

Sincerely,

  
**Colonel Heston Silbert**  
**Director**

Arizona Department of Public Safety  
Five-year Review Report  
13 A.A.C. 12, Private Investigator and Security Guard Hearing Board  
May 18, 2021

- A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department intends for R13-12-102 to expire. The Department believes the rule is redundant and not necessary for the operation of state government under Executive Order 2021-02 Paragraph 1(J). The rule duplicates text within the authorizing statutes on what conditions the Board may issue a good-cause exception.

- B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department has no substantive policy statements for these rules.

**Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056(A) and R1-6-301:**

1. Authorization of the rule by existing statutes:

A.R.S. § 41-1713(A)(4). General authority to make rules necessary for the operation of the Department.

A.R.S. § 32-2405(A)(4). Specific authority authorizing the Board to adopt and enforce rules regarding the establishment of good-cause exceptions for the issuance of licenses or registrations of private investigators and security guards.

Supporting statutes:

- A.R.S. § 32-2404 Hearing Board Qualifications and Appointments
- A.R.S. § 32-2406 Hearings and Special Meetings
- A.R.S. § 32-2412 Good-cause Exceptions for Misdemeanor and Felony Offenses
- A.R.S. § 32-2422 Qualification of Applicant for Agency License
- A.R.S. § 32-2441 Qualification of Applicant for Associate or Employee Registration
- A.R.S. § 32-2459 Grounds for Refusal to Issue License
- A.R.S. § 32-2609 Good-cause Exceptions
- A.R.S. § 32-2612 Qualification of Applicant for Agency License
- A.R.S. § 32-2622 Qualification of Applicant for License

- A.R.S. § 32-2625 Qualification of Applicant for Security Guard Training Instructor
- A.R.S. § 32-2640 Grounds for Refusal to Issue or Renew an Agency License
- A.R.S. § 32-2641 Grounds for Refusal to Issue Individual License
- A.R.S. § 41-1758.03 Fingerprint Clearance Card Issuance

2. The objective of the rule:

Rule	Objective
101	To clarify the rules by defining words that are used in a manner specific to the rules.
102	To specify the minimum requirements an individual must meet before being eligible to apply for a good-cause exception.
103	To specify the information an individual must submit to the Board if the individual wishes to apply for a good-cause exception.
104	To specify the procedures the Board uses to conduct a hearing on a good-cause exception including the factors the Board considers when making its decision.
105	To inform an applicant of the Board's standards for vacating, rescheduling or continuing a hearing.
106	To inform an applicant of the procedure for requesting that the applicant or witness for the applicant appear at a hearing by telephone.
107	To inform an applicant of the actions the Board may take if the applicant or the applicant's representative fails to appear at a scheduled hearing.
108	To inform an applicant of the Board's procedure for issuing a decision following a hearing.

3. Are the rules effective in achieving their objectives? Yes

Rule	Explanation

4. Are the rules consistent with other rules and statutes? Yes

Rule	Statute	Explanation

5. Are the rules enforced as written? No

Rule	Explanation
103	The Board does not enforce the timeframe and form requirement in Section A in the interest of facilitating the application process and imposing the least burden on the public when possible. The Board includes information on the criteria of good-cause exception in the letter of denial and instructs the individual of the opportunity to request a good-cause exception

	hearing. An applicant need only inform the Board that a good-cause exception hearing is wanted.
104	The Board does not enforce the timeframe in Section D in the interest of facilitating the hearing process. The Board allows an applicant to bring written materials to the hearing without having submitted them before the hearing in most cases. The Board recognizes that A.R.S. §§ 32-2412(C) and 32-2609(C) require the applicant to submit to the Board any evidence the applicant will be presenting at the hearing at least five days before the hearing; however, the Board feels that timeframe can hamper the procedure and does not want the hearing to be adversarial.
105	The Board does not enforce the timeframe in Section B in the interest of facilitating the hearing process. The Board allows an applicant to make an oral request that a hearing be rescheduled as late as the day of the scheduled hearing when possible.
106	The Board does not enforce the timeframe and cost repayment in the interest of facilitating the hearing process. The Board allows an oral request to appear by telephone to be made the day of the scheduled hearing when possible. The Board also does not charge the applicant for the costs resulting from a telephonic appearance when possible.

6. Are the rules clear, concise and understandable? Yes

Rule	Explanation

7. Has the agency received written criticisms of the rules within the last five years? No

Rule	Criticism	Action

8. Economic, small business and consumer impact comparison:

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy.

In FY2017, the Board held 74 hearings regarding license denial. It recommended that 24 of the denials be upheld, granted 28 felony and 22 misdemeanor good-cause exceptions. It held 22 disciplinary hearings that resulted in eight license revocations, six license suspension, and eight periods of probation.

In FY2018, the Board held 73 hearings regarding license denial. It recommended that 27 of the denials be upheld and granted 24 felony and 83 misdemeanor good-cause exceptions. It held 48 disciplinary hearings that resulted in 17 license revocations, 25 license suspensions, and six periods of probation.

In FY2019, the Board held 62 hearings regarding license denial. It recommended that 25 of the denials be upheld and granted 21 felony and 16 misdemeanor good-cause exceptions. It held 48 disciplinary hearings that resulted in 11 license revocations, 23 license suspensions, and 14 periods of probation.

In FY2020, the Board held 65 hearings regarding license denial. It recommended that 18 of the denials be upheld and granted 27 felony and 20 misdemeanor good-cause exceptions. It held 61 disciplinary hearings that resulted in 11 license revocations, 32 license suspensions, and 18 periods of probation.

For partial FY2021, the Board has held 47 hearings regarding license denial. It recommended that 16 of the denials be upheld and granted 16 felony and 15 misdemeanor good-cause exceptions. It has held 39 disciplinary hearings that resulted in eight license revocations, 18 license suspensions, and 13 periods of probation.

- 9. Has the agency received any business competitiveness analysis of the rules? No
- 10. Has the agency completed the course of action indicated in the agency’s previous five-year review report? No longer applicable.

Rule	Action Needed	Action Taken
102(1d), (2),(3)	For (1)(d) the statutory reference should be changed to 32-2441(3). A.R.S. §§ 32-2412 and 2609. For (2) and (3): During the fiftieth Legislature-Second Regular Session in 2012, then Governor Brewer signed House Bill 2430 into law. This allows the Board to make good-cause exception decisions on denials for misdemeanor cases, which formerly had been only available for felony cases.	None.  The Department has opted to repeal this rule through A.R.S. 41-1056(J), Page 1, Paragraph A of this report.

- 11. A determination 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 rules including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry. The primary economic burden results from the statutes creating the Board and requiring the Board to hold hearings regarding an application for a good-cause exception. The only economic burden imposed by the rules results from the information an applicant is required to submit for consideration for a good-cause exception. However, as indicated in the report, the Board does not enforce this requirement. Additionally, an applicant chooses to submit information voluntarily in hope of reaping the economic benefit of being licensed and employed as a private investigator or security guard if the Board grants a good-cause exception.

12. Are the rules more stringent than corresponding federal laws? No

There are no applicable federal laws.

13. For rules adopted or amended 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:

These rules do not apply to A.R.S. § 41-1037 as the Board is making a licensing determination based on the provisions in 13 A.A.C. 2, *Private Investigators* and 13 A.A.C. 6, *Security Guards* and the applicable authorizing state statutes.

14. Proposed course of action:

The Department recommends no changes therefore there is no course of action.

## TITLE 13. PUBLIC SAFETY

## CHAPTER 12. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD

(Authority: A.R.S. § 32-2405(A)(4) et seq.)

**ARTICLE 1. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD**

*Article 1, consisting of Sections R13-12-101 through R13-12-108, made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).*

## Section

- R13-12-101. Definitions
- R13-12-102. Good-cause Exception Prerequisites
- R13-12-103. Application for a Good-cause Exception
- R13-12-104. Hearing on Good-cause Exception
- R13-12-105. Vacating, Rescheduling, or Continuing a Hearing
- R13-12-106. Telephonic Testimony
- R13-12-107. Failure to Appear
- R13-12-108. Notice of Decision

**ARTICLE 1. PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING BOARD****R13-12-101. Definitions**

The following definitions apply to this Article:

“Applicant” means an individual who meets the prerequisites in R13-12-102.

“Board” means the Private Investigator and Security Guard Hearing Board.

“Department” means the Arizona Department of Public Safety.

“Department’s notice” means a notice of denial issued by the Department under A.R.S. § 32-2640, 32-2641, or 32-2459.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-102. Good-cause Exception Prerequisites**

The Board shall consider an individual for a good-cause exception only if:

1. The individual:
  - a. Is denied a security guard agency license under A.R.S. § 32-2640 for failure to qualify under A.R.S. § 32-2612(A)(3);
  - b. Is denied an associate, security guard, or armed security guard registration certificate under A.R.S. § 32-2641 for failure to qualify under A.R.S. § 32-2622(A)(3);
  - c. Is denied a private investigator agency license under A.R.S. § 32-2459 for failure to qualify under A.R.S. § 32-2422(A)(3); or
  - d. Is denied a private investigator associate or employee registration certificate under A.R.S. § 32-2459 for failure to qualify under A.R.S. § 32-2441(A)(3);
2. The individual completed all terms of sentencing imposed as a result of all felony convictions; and
3. The individual completed all terms of sentencing imposed as a result of all felony convictions at least

10 years before the date on the Department’s notice.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-103. Application for a Good-cause Exception**

**A.** To apply for a good-cause exception, an applicant shall submit eight copies of the following materials to the Board within 60 days from the date on the Department’s notice:

1. A good-cause exception application form, which is available from the Department, that includes the following information about the applicant:
  - a. Full legal name;
  - b. Any other names ever used;
  - c. Date of birth;
  - d. Mailing address;
  - e. Home and daytime telephone numbers;
  - f. List of all of applicant’s felony arrests not listed on the Department’s notice;
  - g. Detailed description of all of applicant’s felony arrests including:
    - i. Circumstances leading to the arrest;
    - ii. Who else was involved in the event leading to the arrest;
    - iii. Where and when the event occurred;
    - iv. Mitigating circumstances, if any;
    - v. Disposition of the charge;
    - vi. Terms of sentencing, if any; and
    - vii. Whether the sentencing terms have been completed satisfactorily; and
  - h. Applicant’s notarized signature certifying that the information provided is true and correct;
2. Two letters of reference, on a form prescribed by the Board, that attest to the applicant’s rehabilitation and meet the following requirements:
  - a. Both letters of reference are from individuals who have known the applicant at least one year; and
  - b. At least one letter of reference is from the applicant’s current or former employer or an individual who has known the applicant at least three years;
3. If the Department’s notice indicates that the Department was unable to determine the disposition of a felony charge, a copy of documents from the appropriate court showing the disposition of the felony charge or showing that records regarding the felony charge against the applicant either do not exist or have been purged; and
4. For every felony conviction, regardless of whether the conviction is listed on the Department’s notice, a copy of documents from the appropriate court showing that the applicant met all judicially imposed sentencing terms or that records regarding the applicant either do not exist or have been purged.

- B.** An applicant may submit other documents that the applicant wants the Board to consider in determining whether to grant a good-cause exception.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-104. Hearing on Good-cause Exception**

- A.** The Board shall schedule a hearing regarding a good-cause exception for an applicant to occur within 60 days after receiving the materials described in R13-12-103.
- B.** The Board shall provide the applicant with at least 30 days notice of the date, time, and location of the hearing on the applicant's application for a good-cause exception.
- C.** The applicant may be represented at the hearing.
- D.** If the applicant plans to present written evidence at the hearing that was not included with the application, the applicant shall submit the written evidence to the Board through the Department at least five days before the hearing.
- E.** The Board shall conduct the hearing in an informal manner without adherence to the rules of evidence required in a judicial proceeding.
- F.** At the hearing, the applicant shall show to the Board's satisfaction that the applicant:
1. Has never been convicted of an offense listed in A.R.S. § 41-1758.03(B), and
  2. Is not awaiting trial on an offense listed in A.R.S. § 41-1758.03(B).
- G.** At the hearing, the applicant has the burden of persuading the Board that the applicant should be granted a good-cause exception.
- H.** In deciding whether to grant a good-cause exception, the Board shall consider:
1. The extent of the applicant's criminal record;
  2. The length of time that has elapsed since the most recent offense was committed;
  3. The nature of the offense;
  4. Evidence supporting any applicable mitigating circumstances;
  5. Evidence supporting the degree to which the applicant participated in the offense; and
  6. Evidence supporting the extent of the applicant's rehabilitation, including:
    - a. Completion of probation, parole, or community supervision;
    - b. Whether the applicant paid restitution or other compensation for the offense;
    - c. Evidence of positive action to change criminal behavior such as completing a drug-treatment program or counseling; and
    - d. Personal references attesting to the applicant's rehabilitation.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-105. Vacating, Rescheduling, or Continuing a Hearing**

- A.** Vacating a hearing. If an applicant withdraws the applicant's application for a good-cause exception, the Board

shall vacate the hearing regarding the application.

- B.** Rescheduling a hearing. The Board shall reschedule a hearing if the applicant submits a written request to the Board at least 48 hours before the scheduled hearing that demonstrates:
1. Attending the scheduled hearing is impossible using reasonable diligence or will cause undue hardship; and
  2. Rescheduling the hearing will avoid prejudice.
- C.** Continuing a hearing. The Board shall continue a hearing if the continuance will serve administrative convenience, expedience, or economy and avoid prejudice.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-106. Telephonic Testimony**

The Board shall allow an applicant or a witness for the applicant to provide telephonic testimony at the hearing on the applicant's application for a good-cause exception if:

1. The applicant submits a written request to the Board at least 48 hours before the scheduled hearing that demonstrates:
  - a. Personal appearance at the hearing by the applicant or applicant's witness will cause undue hardship, and
  - b. Telephonic presence will not cause prejudice, and
2. The applicant pays all costs resulting from the telephonic appearance.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-107. Failure to Appear**

If an applicant or the applicant's representative fails to appear at the scheduled hearing, the Board shall:

1. Conduct the hearing and decide whether to grant or deny the good-cause exception based on the evidence previously submitted, or
2. Reschedule the hearing.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

**R13-12-108. Notice of Decision**

- A.** Within seven business days after concluding the hearing regarding a good-cause exception for an applicant, the Board shall provide written notice to the applicant that the good-cause exception has been granted or denied.
- B.** The Board shall provide to the Department a copy of the written notice granting or denying a good-cause exception so the Department can take any needed action regarding the applicant's application for licensure.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2844, effective July 11, 2006 (Supp. 06-3).

### 32-2405. Powers and duties of hearing board

#### A. The board shall:

1. Submit recommendations to the director on disciplinary actions or the denial of licenses or registrations.
2. Annually elect from its membership a chairman and a secretary, who serve at the pleasure of the board.
3. Determine good cause exceptions pursuant to sections 32-2412 and 32-2609.
4. Adopt rules to establish good cause exceptions for the issuance of licenses or registrations pursuant to this chapter and chapter 26 of this title.
5. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to sections 32-2459, 32-2640 and 32-2641.

#### B. The board may:

1. 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 an investigation or hearing.
2. Annually review the security guard and armed security guard training curricula and make recommendations to the department for the modification of or update to training courses prescribed in section 32-2632 and the addition of continuing education courses.

### 41-1713. Powers and duties of director; authentication of records

#### A. The director of the department shall:

1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

#### B. The director may:

1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.
4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

**DEPARTMENT OF TRANSPORTATION**

Title 17, Chapter 4, Article 7, Hazardous Materials Endorsement



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** Sep 8, 2021

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

**FROM:** Council Staff

**DATE:** Aug 10, 2021

**SUBJECT:** Arizona Department of Transportation  
Title 17, Chapter 4, Article 7

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This Five-Year-Review Report from the Department of Transportation relates to rules in Title 17, Chapter 4, Article 7, regarding Hazardous Materials Endorsement.

In the last 5YRR of these rules the Department proposed to amend several of its rules to improve their overall clarity, conciseness, and understandability. The Department proposed to complete a rulemaking by December 2016, but instead completed the rulemaking in May 2018.

### **Proposed Action**

The Department is proposing to amend four of its rules to improve their overall clarity, conciseness, understandability, and enforcement. ADOT indicates they received an exception to the rule moratorium by the Governor's Office on July 15, 2021, and plans to complete a rulemaking by August 2021.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The economic impact of the rules in Article 7 has essentially remained the same as estimated in the last economic impact statements prepared for the rules. The Department believes that the economic impact of these rules is minimal and fees charged have remained the same since the last five-year review report completed in 2016.

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

In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. However, each state is prohibited under Public Law 107-56 "USA PATRIOT Act" from issuing a license to operate a motor vehicle transporting a hazardous material unless the Secretary of Transportation has first determined that the individual is not a security risk. 49 CFR Part 1572 - Credentialing and Security Threat Assessments provides the federal requirements to carry out the program for endorsing credentials for hazardous material haulers. 49 U.S.C. 31102 requires a state to submit a plan agreeing to enforcement of the regulations relating to hazardous materials transportation safety, among other things, in order to qualify for grants relating to motor carrier and motor carrier safety. Therefore, to the extent permitted by federal law, the Department has determined that the following rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The fee charged for the assessment is determined by TSA.

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 criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, conciseness, and understandable, with the exception of the following:

R17-4-701 - Definitions

R17-4-702 - Scope

R17-4-708 - Determination Threat Assessment

R17-4-709 - Determination of Security Threat

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written with the exception of the following:

R17-4-709(2)(c) - Determination of Security Threat

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

Not applicable. There are no corresponding federal laws to the rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules relate to certain requirements for applicants of an HME (Hazardous Materials Endorsement). While an HME is a general permit since the activities and practices authorized by it are substantially similar in nature for all holders, the rules being reviewed do not require the issuance of the HME.

11. **Conclusion**

As mentioned above, and for the reasons mentioned in the report the Department is proposing to amend four of its rules to improve overall clarity, conciseness, understandability, and enforcement. The Department plans to complete a rulemaking by August 2021.

Council staff recommends approval of this report.

Director's Office

**Douglas A. Ducey**, Governor  
**John S. Halikowski**, Director  
**Scott Omer**, Deputy Director/Chief Operating Officer  
**Kevin Biesty**, Deputy Director for Policy  
**Dallas Hammit**, Deputy Director for Transportation

June 28, 2021

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

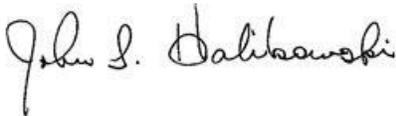
Re: Arizona Department of Transportation, 17 A.A.C. Chapter 4, Article 7, Five-Year Review Report

Dear Ms. Sornsin,

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 4, Article 7, which is due on June 30, 2021. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department hereby certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Rules Analyst, at (480) 267-6610 or at COLson2@azdot.gov.

Sincerely,



John S. Halikowski  
Director

Enclosure: ADOT Five-year Review Report



## Rules and Policy Development

**A.A.C. Title 17 – Transportation**

**Chapter 4**

**Department of Transportation**

**Title, Registration, and Driver Licenses**

**Article 7 – Hazardous Materials Endorsement**

# **Five-Year Review Report**

*Douglas A. Ducey*

*Governor*

*John S. Halikowski*

*ADOT Director*

**Arizona Department of Transportation**

**Five-Year Review Report**

**17 A.A.C. Chapter 4, Article 7**

**June 2021**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 28-366

Specific Statutory Authority: A.R.S. §§ 28-3103 and 28-5204

**2. The objective of each rule:**

Rule	Objective
R17-4-701	This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article.
R17-4-702	This rule incorporates by reference, and makes applicable to all commercial drivers who are applying for a hazardous materials endorsement (HME), the federal regulations pertaining to the Transportation Security Administration's (TSA's) Security Threat Assessment of drivers who are transporting hazardous materials as the Department deems reasonable and proper in governing safety operations and as required under A.R.S. § 28-3103.
R17-4-704	This rule identifies the specific requirements the applicant must meet in order to be eligible to receive an HME in order to provide clarity and expectations of applicants.
R17-4-705	This rule further details the required testing of the applicable HME applicant. This is to help distinguish which testing is required based on the type of applicant.
R17-4-706	This rule identifies the applicable fees for an applicant. This rule clarifies to the applicants which types of fees will be required when applying for an HME.
R17-4-707	This rule identifies the timeframe for the Department to provide notification of the expiration of the Security Threat Assessment. The rule also requires the Department to cancel the driver license privileges of an applicant who fails to reapply for a Security Threat Assessment and fails to have the HME removed. This rule is in keeping with the requirements under 49 CFR 1572.13 and helps the stakeholders to understand the consequences of failing to comply.
R17-4-708	This rule prescribes the validity period of a Security Threat Assessment and the instances when a new one is required following certain corrective actions. This rule helps stakeholders by clarifying the actions that will require a new Security Threat Assessment and HME regardless of the 5-year validity period.
R17-4-709	This rule describes the actions the Department takes when an applicant fails the Security Threat Assessment to help applicants better understand the process of what is required.
R17-4-710	This rule prescribes the entity to which and the reasons an applicant may request an appeal or administrative hearing to clarify which actions can be readdressed and to whom the applicants need to contact.

R17-4-712	This rule provides the requirements to transfer an HME from another state and clarifies the process for the transfer applicants.
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3. **Are the rules effective in achieving their objectives?** Yes  No

4. **Are the rules consistent with other rules and statutes?** Yes  No

5. **Are the rules enforced as written?** Yes  No

Rule	Explanation
R17-4-709(2)(c)	In subsection (2)(c), the language specifies a CDL office for the removal of an HME. The Department has extended the ability for this to occur at any of the Department’s Motor Vehicle Division Customer Service offices. This subsection needs to be updated to reflect this.

6. **Are the rules clear, concise, and understandable?** Yes  No

While the Department believes the rules under this Article are generally clear, concise, and understandable, the Department has determined that the following changes would improve consistency and clarity.

Rule	Explanation
R17-4-701	In the definition of “Department”, replace the word “under” with “in” so that the term is “defined in,” which allows the term to be consistent in use and to provide clearer verbiage.
R17-4-702	a. Incorporate by reference the October 1, 2020, edition of 49 CFR 1572. The Department is engaged in rulemaking to update to the 2020 edition of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) in 17 A.A.C. 5, Article 2 which correspond with the rules in this Article since it also makes requirements of HME applicants and compliance with 49 CFR 1572. While there are no updates to 49 CFR 1572 since the 2016 edition that is currently incorporated, incorporating a newer edition would ensure the rules are consistent and current with the Department’s other rules and federal regulations. b. Update the website address where the federal regulations may be viewed, the name of the U.S. Government Bookstore, and the International Standard Book Number for the new book.
R17-4-708	In subsection (B), replace the word “under” with “in” so that the term is “defined in,” which allows the term to be consistent in use and to provide clearer verbiage.
R17-4-709	In subsection (2)(c), update which offices can remove the HME in order to be more accurate and provide clarity to the applicants.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules in Article 7 has essentially remained the same as estimated in the last economic impact statements prepared for the rules. The Department believes that the economic impact of these rules is minimal and fees charged have remained the same since the last five-year review report completed in 2016.

The Department now conducts commercial driver license (CDL) transactions at all Motor Vehicle Division Customer Service offices versus the previous restriction to offices designated as CDL offices. The applicable fees charged by the Department as detailed in A.R.S. 28-3002 have not changed. To arrange for an HME Security Threat Assessment, applicants may apply online at <https://universalenroll.dhs.gov/programs/hme>, through a TSA application center, or by calling 855-347-8371. TSA continues to charge a fee of \$86.50 for the HME Security Threat Assessment, which was the same amount charged at the time of the 2016 five-year review report.

As of January 20, 2021, there are 1,548 CDL holders with an HME and 14,525 CDL holders with dual endorsement of tank and hazardous materials. As of March 25, 2021, there are 21,885 valid CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 374 applicants who did not successfully complete the required TSA HME Security Threat Assessment. There has also been one case in which an active HME was immediately revoked as a result of a TSA HME Security Threat Assessment determination.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In the last five-year review report, the Department anticipated amending the rules and filing a final rulemaking with the Council on or before December 30, 2016. The Department did not complete the proposed course of action as indicated by December 30, 2016; instead, the Department completed rulemaking in 2018, which was approved by the Council on May 1, 2018. At the time of the last report, the Department was working towards incorporating the October 1, 2015, edition of the FMCSRs and HMRs, but as the Department worked on that rule package a decision was made to change to the 2016 edition, which required a slight restart to the process so additional time, re-evaluations, and work was necessary.

Rule	Explanation
R17-4-701	The Department proposed to amend the rule to correct the reference to 49 CFR 1572.3 to just 49 CFR 1572 to encompass the whole part and the terms used throughout the part and a formatting change was needed to remove the numbers in front of the definitions to be consistent with the Office of Secretary of State’s rulemaking requirements. <i>(Completed May 1, 2018)</i>
R17-4-702	The Department proposed to amend the rule to incorporate by reference the most current edition of 49 CFR 1572 and revise the wording to be more consistent and clear. <i>(Completed May 1, 2018)</i>
R17-4-704	No proposed course of action
R17-4-705	The Department proposed to amend subsection (B) by removing “with an existing HME” after “transfer applicant” since that is already in the definition of a transfer applicant and add the word “any” before “applicable fee.” <i>(Completed May 1, 2018)</i>
R17-4-706	The Department proposed to revise the beginning of the sentence to “All applicants and transfer applicants shall pay all applicable fees as prescribed by” in order to make it more clear and understandable. <i>(Completed May 1, 2018)</i>
R17-4-707	The Department proposed to amend the rule by replacing the term “Division” with “Department” to reflect organizational changes made within the Department and changing “Driver License” into lowercase. <i>(Completed May 1, 2018)</i>
R17-4-708	No proposed course of action

R17-4-709	The Department proposed to amend the rule by replacing the term “Division” with “Department” to reflect organizational changes made within the Department, removing the word “designated” from subsection (2)(c) since the applicant may visit any CDL office, and changing “Driver License” into lowercase. <i>(Completed May 1, 2018)</i>
R17-4-710	The Department proposed to amend the rule by replacing the term “Division” with “Department” to reflect organizational changes made within the Department and changing “driving privileges” in subsection (B) into “driver license privileges” so that it will be more accurate, understandable, and consistent. <i>(Completed May 1, 2018)</i>
R17-4-712	The Department proposed to amend the rule by removing subsections (C) and (D) since they are unnecessary, changing and reformatting subsection (B) to accurately depict the current process of verifying the TSA approval before issuing the CDL with an HME, and spelling out the acronym STA (Security Threat Assessment). <i>(Completed May 1, 2018)</i>

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. However, each state is prohibited under Public Law 107-56 “USA PATRIOT Act” from issuing a license to operate a motor vehicle transporting a hazardous material unless the Secretary of Transportation has first determined that the individual is not a security risk. 49 CFR Part 1572 - Credentialing and Security Threat Assessments provides the federal requirements to carry out the program for endorsing credentials for hazardous material haulers. 49 U.S.C. 31102 requires a state to submit a plan agreeing to enforcement of the regulations relating to hazardous materials transportation safety, among other things, in order to qualify for grants relating to motor carrier and motor carrier safety. Therefore, to the extent permitted by federal law, the Department has determined that the following rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The fee charged for the assessment is determined by TSA.

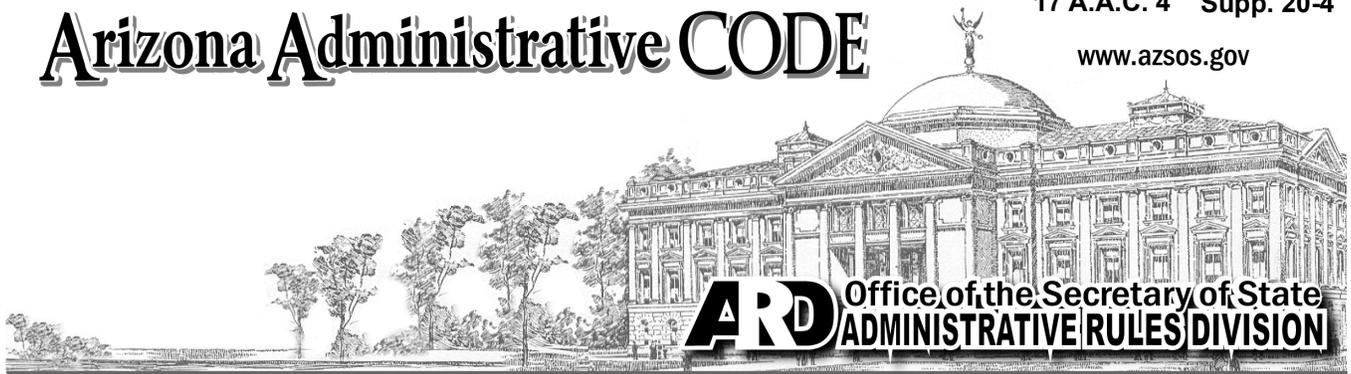
**12. Are the rules more stringent than corresponding federal laws? Yes \_\_\_ No X**

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules concern certain requirements for applicants of an HME. An HME is a general permit since the activities and practices authorized by it are substantially similar in nature for all holders. These rules though do not require the issuance of the HME; that requirement is under 17 A.A.C. Chapter 5, Article 2 and state statute.

**14. Proposed course of action**

The Department is currently in the process of working on a rule package to incorporate by reference the October 1, 2020, edition of 49 CFR 1572 and update and amend the rules as indicated in item 6. The Department received permission from the Governor's Office on July 15, 2020, to proceed with this rulemaking. The Department intends to submit the final rules to the Council by August 2021. The Department does not plan to make any changes to R17-4-704 through R17-4-707, R17-4-710, and R17-4-712 since no action is necessary at this time.



## TITLE 17. TRANSPORTATION

### CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

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

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

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2020 through December 31, 2020 (Supp. 20-4).

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#### Questions about these rules? Contact:

Name: Candace Olson, Rules Analyst  
Address: Rules and Policy Development  
Department of Transportation  
206 S. 17th Ave., Mail Drop 180A  
Phoenix, AZ 85007  
Telephone: (602) 712-4534  
E-mail: [COlson2@azdot.gov](mailto:COlson2@azdot.gov)  
Website: <https://azdot.gov/about/government-relations>

#### The release of this Chapter in Supp. 20-4 replaces Supp. 19-3, 1-39 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).

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### 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.

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



Administrative Rules Division  
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**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES**

**ARTICLE 1. GENERAL PROVISIONS**

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## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

**ARTICLE 1. GENERAL PROVISIONS****R17-4-101. Definitions**

In addition to the definitions prescribed under A.R.S. § 28-101, A.R.S. § 28-3001, and 6 CFR 37.3, the following terms apply to this Chapter, unless otherwise specified:

“Non-operating identification license” means a credential issued by the Department for identification purposes only, as prescribed under A.R.S. § 28-3165, which does not grant authority to operate a motor vehicle and is not intended to be accepted by federal agencies for an official purpose defined under 6 CFR 37.3.

“Travel-compliant driver license” has the same meaning as the term REAL ID Driver’s License defined under 6 CFR 37.3, which is a driver license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials intended to be accepted by federal agencies for official purposes.

“Travel-compliant identification license” has the same meaning as the term REAL ID Identification Card as defined under 6 CFR 37.3, which is a non-operating identification license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials acceptable by federal agencies for official purposes.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

**ARTICLE 2. VEHICLE TITLE****R17-4-201. Definitions**

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

“Authorized ELT Participant” means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

“Date of lien” means the date identified by the lienholder as the date the loan was issued to the borrower.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Encumbrance” means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

“ELT” means Electronic Lien and Title.

“EPA standards” means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

“FMVSS” means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

“Joint tenancy with right of survivorship” means vehicle ownership by two or more persons and the deceased joint owner’s interest in the vehicle is transferred to the surviving owners.

“Lienholder” means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

“Lienholder Number” means the computer-generated record number assigned by the Division to a lienholder.

“Low-speed vehicle” has the same meaning as prescribed under 49 CFR 571.3.

“MPV” means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NHTSA” means National Highway Traffic Safety Administration of the United States Department of Transportation.

“Operation of law lien” means a lien resulting from the application of a state or federal statute.

“Primary lien” means the first of any multiple liens recorded on a vehicle or mobile home record.

“Registered importer” means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

“Tenancy in common” means vehicle ownership by two or more people without the right of survivorship.

“Valid titling document” means one of the following documents showing a vehicle’s compliance with FMVSS and EPA standards:

A NHTSA Declaration,

A manufacturer’s letter, or

A U.S. federal compliance label printed in English.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-202. Certificate of Title Form**

- A.** The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.
- B.** MVD shall provide space on the Certificate of Title form for the following information:
  1. Title information:
    - a. Title number;
    - b. Issue date;
    - c. Previous title number; and
    - d. State and date of previous title.
  2. Vehicle information:
    - a. Vehicle identification number (VIN);
    - b. Vehicle make, model, year, and body style;
    - c. Fuel type;
    - d. Odometer information; and
    - e. Vehicle mechanical or structural condition.
  3. Lienholder information:
    - a. Lienholder name and address;
    - b. Lienholder customer or federal identification number; and
    - c. Lien amount and lien date.
  4. Vehicle owner’s or owner’s legal designee information:
    - a. Name; and
    - b. Mailing address.
  5. Ownership change information:
    - a. Sale date;
    - b. Purchaser’s name and address;
    - c. Odometer mileage disclosure statement;
    - d. Seller’s signature; and
    - e. Seller’s signature certification.
  6. Dealer reassignment information.

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7. Other information as required by the Division for internal processing and recordkeeping.

**Historical Note**

New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-203. Certificate of Title and Registration Application**

- A. In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:

1. Vehicle information:
    - a. Tab number;
    - b. Initial registration month and year;
    - c. Vehicle make, model, year, and body style;
    - d. Mechanical or structural status indicating whether the vehicle is:
      - i. Dismantled,
      - ii. Reconstructed,
      - iii. Salvaged, or
      - iv. Specially constructed;
    - e. Gross vehicle weight;
    - f. Fuel type;
    - g. Odometer information;
    - h. Current title number and titling state.
  2. An owner's or lessee's legal ownership status.
  3. Lienholder information:
    - a. Lienholder names and addresses, and
    - b. Lien amount and date incurred.
  4. If a mobile home, the physical site.
  5. Co-ownership information:
    - a. A statement of whether any survivorship rights in the vehicle exist; and
    - b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
  6. Owner certification information verifying:
    - a. Ownership,
    - b. Inclusion of all liens and encumbrances, and
    - c. Seller-verified odometer reading.
  7. Applicant signatures.
  8. An acknowledgement that:
    - a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
    - b. The applicant has read a printed explanation of odometer reading codes.
  9. Other information required by the Division for internal processing and recordkeeping.
- B. An applicant may voluntarily provide the following information on the form:
1. Applicant's birth date;
  2. Applicant's driver license number; and
  3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

**Historical Note**

New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-204. Seller's Signature Acknowledgement**

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

**Historical Note**

Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-205. Co-ownership and Vehicle Title**

- A. A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
  2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
    - a. The name of each co-owner separated by "or"; and
    - b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
  3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."
- B. Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehicle title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.
- C. After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
1. A certified probate court order, or
  2. A successor's affidavit under A.R.S. § 14-3971(B).

**Historical Note**

Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

**R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"**

- A. Titling standards.
1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
    - a. A valid titling document,
    - b. A completed MVD title and registration application as prescribed under R17-4-203,
    - c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
    - d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
    - e. A certificate that the vehicle was converted to meet:
      - i. EPA standards, and
      - ii. FMVSS.

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2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
  3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
  4. Titling standards for vehicles manufactured according to Canadian specifications.
    - a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
      - i. Is not for resale;
      - ii. Has a GVWR of less than 10,000 pounds; and
      - iii. Is a passenger vehicle, motorcycle, or MPV.
    - b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
      - i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
      - ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
    - c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:
      - i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
      - ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).
- B.** The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
1. Is not exempt under subsections (A)(2) or (A)(3), or
  2. Does not qualify under subsection (A)(4).

**Historical Note**

Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

**R17-4-207. Lien Filing**

- A.** Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at [www.azdot.gov/mvd/FormsandPub/mvd.asp](http://www.azdot.gov/mvd/FormsandPub/mvd.asp)), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
  2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the

lien filing does not meet the requirements prescribed in this subsection.

- B.** Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.
- C.** Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
  2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

**Historical Note**

Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-207 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-208. Lien Clearance**

- A.** Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
1. The transmission of an electronic lien release from an ELT Participant,
  2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
  3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),
  4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
  5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
  6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).
- B.** Lienholder satisfaction of lien requirements.
1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance

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instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.

2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
  3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.
- C.** Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.
- D.** Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-209. Recodified****Historical Note**

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-210. Repealed****Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

**Appendix A. Repealed****Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

**R17-4-211. Reserved****R17-4-212. Reserved****R17-4-213. Reserved****R17-4-214. Reserved****R17-4-215. Reserved****R17-4-216. Recodified****Historical Note**

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-217. Recodified****Historical Note**

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-218. Recodified****Historical Note**

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-219. Recodified****Historical Note**

Former Rule, General Order 101. Former Section R17-4-42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-220. Repealed****Historical Note**

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44 renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-221. Repealed****Historical Note**

Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-222. Recodified****Historical Note**

Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-223. Repealed****Historical Note**

Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31,

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1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

**R17-4-224. Recodified****Historical Note**

Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-225. Reserved****R17-4-226. Recodified****Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix A. Repealed****Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1, 1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to R17-4-226(C) (Supp. 00-2).

**R17-4-226.01. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-227. Recodified****Historical Note**

Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-228. Reserved****R17-4-229. Reserved****R17-4-230. Recodified****Historical Note**

Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-231. Recodified****Historical Note**

Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-232. Reserved****R17-4-233. Reserved****R17-4-234. Reserved****R17-4-235. Reserved****R17-4-236. Reserved****R17-4-237. Repealed****Historical Note**

Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-238. Repealed****Historical Note**

Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-239. Repealed****Historical Note**

Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-240. Recodified****Historical Note**

Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-241. Recodified****Historical Note**

Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-242. Repealed****Historical Note**

Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

**R17-4-243. Repealed****Historical Note**

Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-244. Reserved****R17-4-245. Recodified****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective

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July 20, 2001 (Supp. 01-3).

**R17-4-246. Recodified****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-247. Reserved****R17-4-248. Reserved****R17-4-249. Reserved****R17-4-250. Repealed****Historical Note**

Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

**R17-4-251. Repealed****Historical Note**

Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

**R17-4-252. Recodified****Historical Note**

Former Rule, General Order 82. Former Section R17-4-34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-253. Reserved****R17-4-254. Reserved****R17-4-255. Reserved****R17-4-256. Reserved****R17-4-257. Reserved****R17-4-258. Reserved****R17-4-259. Reserved****R17-4-260. Recodified****Historical Note**

Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-261. Reserved****R17-4-262. Reserved****R17-4-263. Reserved****R17-4-264. Reserved****R17-4-265. Repealed****Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

**ARTICLE 3. VEHICLE REGISTRATION****R17-4-301. Definitions**

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

“Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

“Biennial” means once every two years.

“Business day” means a day other than a Sunday or holiday.

“Calendar quarter” means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Day” means the 24-hour period from one midnight to the following midnight.

“Disabled person” means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.

“Drop box” means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

“Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.

“Electronic delivery” means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

“Emergency Vehicle Permit” means a document issued by the Division’s Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

“Expiration date” means the day, month, and year in which a vehicle registration expires.

“Fire Engine” means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

“IM147 Test” means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

“Initial registration” means the first registration of an included vehicle in Arizona.

“OBD” means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Off-highway vehicle” has the same meaning as prescribed under A.R.S. § 28-1171.

“Operator Requirements” means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on

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file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Private fire department” means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

“Private Fire Emergency Vehicle” means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

“Registration” means the authorization, issued by the Division that allows a vehicle to use state highways.

“Registration fees” means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

“Registration period” means the time-frame during which a vehicle registration is valid.

“Renewal registration” means the second and subsequent registration of an included vehicle.

**Historical Note**

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

**R17-4-302. Staggered Registration for Apportioned Commercial Vehicles**

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
  - a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
  - b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
  - c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
  - d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
  - a. Ensure that all vehicles within a fleet have the same registration period.
  - b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
  - c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

**Historical Note**

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20,

2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-303. Biennial Registration**

- A. Biennial registration.
  1. The Division may register any vehicle biennially, unless excluded.
  2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.
- B. Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
  1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
  2. A vehicle that requires an annual emissions test.
  3. A vehicle subject to any one of the following types of registration:
    - a. Allocated registration under A.R.S. § 28-2261,
    - b. Apportioned registration under A.R.S. § 28-2261,
    - c. Fleet registration under A.R.S. § 28-2202, or
    - d. Interstate registration under A.R.S. § 28-2052.
  4. A vehicle with an undersized mobile home plate registration.
  5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty military member, a widow, widower, or disabled person other than a 100% disabled veteran.

**Historical Note**

Transferred to R17-1-303 (Supp. 92-4). New Section recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-304. Staggered Registration for Included Vehicles**

- A. Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
  1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
    - a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
    - b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
  2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
    - a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
    - b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.
- B. Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
  1. A vehicle exempt from registration;
  2. A vehicle subject to any one of the following types of registration:
    - a. Allocated registration under A.R.S. § 28-2261,
    - b. Apportioned registration under A.R.S. § 28-2261,
    - c. Fleet registration under A.R.S. § 28-2202,
    - d. Interstate registration under A.R.S. § 28-2052, or
    - e. Seasonal agricultural registration under A.R.S. § 28-5436;

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3. A vehicle subject to a one-time registration fee;
  4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
  5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
  6. A moped;
  7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.
- C.** Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.
- D.** Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
  2. Biennial registration: Expires 24 months from the expiration of the previous registration period.
- E.** Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:
    - a. The application for registration or registration card, and
    - b. Payment of registration fees.
  2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
    - a. Required registration information, and
    - b. Credit card information.
- F.** Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.
- G.** Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
  2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.
- H.** Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
  2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
  3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
  4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
  5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.
- I.** Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
  2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
  3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

**Historical Note**

Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-305. Temporary Registration Plate “TRP” Procedure**

- A.** Definitions.
1. “Charitable Event TRP” means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
  2. “Deal Unwound” means the vehicle was returned to the dealership and the sale was not completed.
  3. “Voided TRP” means a TRP that the issuer records as voided after issuing the TRP.
- B.** Issuing.
1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
  2. The TRP expiration date shall be 45 days from the issue date.
  3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
  4. An issuer shall not issue more than one TRP per vehicle sale.
  5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.
- C.** Voiding. An issuer shall void a TRP when:
1. The TRP is lost,
  2. The TRP is damaged,
  3. The dealer reports a deal unwound,
  4. The issuer enters the wrong vehicle identification number, or
  5. The issuer enters the wrong customer identification number.

**Historical Note**

Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006

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(Supp. 05-4).

**R17-4-306. Nonresident Daily Commuter Fee**

A nonresident daily commuter shall pay a fee of \$8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

**Historical Note**

Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

**R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee**

- A. Under A.R.S. § 28-4151(A), the Division shall assess a \$50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.
- B. Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

**Historical Note**

Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

**R17-4-308. Official Vehicle License Plates**

- A. The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).
- B. A license plate issued under A.R.S. § 28-2511 has no expiration date.
- C. An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.
- D. A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
  2. Display each license plate as prescribed by A.R.S. § 28-2354; and
  3. Maintain a record of each license plate transfer that includes:
    - a. The date of the transfer;
    - b. The year, make, and model of the vehicle, and
    - c. The vehicle identification number (VIN) for each car involved in the transfer.

**Historical Note**

Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

**R17-4-309. Private Fire Emergency Vehicle Permit**

- A. Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.

1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
  2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
  3. The Private Fire Emergency Vehicle Permit is not transferable.
  4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.
- B. Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and
  2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
    - a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;
    - b. Is written for a combined single-limit coverage of at least \$5 million;
    - c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
    - d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.
- C. Operational requirements.
1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
  2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
  3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
  4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.
- D. Denial. If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.
- E. Revocation. If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.

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1. The emergency vehicle permit is immediately revoked upon a determination that:
    - a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
    - b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
  2. The revocation shall be preceded by a notice of intent to revoke.
    - a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
    - b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
  3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.
- F. Administrative hearing.** The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

**Appendix A. Repealed****Historical Note**

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

**R17-4-310. Personalized License Plates**

- A. Definitions.**
1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
  2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
  3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
  4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.
- B. A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.**
1. An applicant shall provide the following information on the form:
    - a. Name of the vehicle's owner or lessee;
    - b. Vehicle owner's or lessee's mailing address;
    - c. Vehicle's make and year;
    - d. Vehicle identification number;
    - e. Vehicle's current plate number;
    - f. Date the vehicle's current registration expires;
    - g. Plate number to appear on the personalized plate;
    - h. Meaning or message of the personalized plate; and
    - i. Other information required by the Division.
  2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.
- C. The Division shall reject the application if the requested plate number:**
1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
  2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
  3. Expresses contempt for or ridicule or superiority of a class of persons;
  4. Duplicates another registration number;
  5. Has connotations that are profane or obscene; or
  6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).
- D. Rejection of application.**
1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.
  2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:  
Motor Vehicle Division  
Special Plates Unit, Mail Drop 801Z  
PO Box 2100  
Phoenix, Arizona 85001-2100.
- E. Revocation of personalized plates; appeal.**
1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division shall require the plate holder to surrender the plates to the division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).
  2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
  3. Refund of personalized plate fees on revocation.
    - a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
    - b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
  4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

**Historical Note**

Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

**R17-4-311. Special Organization Plate List**

As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by

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the state license plate commission and available for issue to qualified applicants:

1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

**Historical Note**

Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

**R17-4-312. Off-highway Vehicle User Indicia**

- A.** For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:
1. The off-highway vehicle user indicia application provided by the Division, and
  2. The fee prescribed under subsection (C).
- B.** The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
  2. Primarily off-highway, occasionally on-highway; or
  3. Primarily on-highway, occasionally off-highway.
- C.** The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is \$25.
- D.** The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.
- E.** The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.

**Historical Note**

Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4). New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

**R17-4-313. Public Safety Fee**

- A.** Pursuant to A.R.S. § 28-2007 and until July 1, 2021, at the time of the initial or renewal registration of a vehicle, the owner or lessee shall pay a public safety fee as determined in subsection (B).
1. An owner or lessee who registers a vehicle for more than one year shall be assessed a fee for each registration year except for any registration year that begins on or after July 1, 2021.
  2. The fee will be assessed for the initial registration and upon each transfer of ownership of a permanent trailer.
  3. The fee will be assessed for each vehicle in a fleet.
  4. The fee will be assessed on a vehicle that is a part of the International Registration Plan.

5. The fee will be assessed upon each transfer of any vehicle subject to registration by the new owner.

- B.** The Department determines the annual amount for the public safety fee based upon the following:
1. The following vehicle owner or lessee shall pay a fee of \$0:
    - a. An Arizona resident who is a member of the U.S. armed forces, including a National Guard or reserve unit, who is deployed in support of a worldwide contingency operation of the U.S. armed forces;
    - b. An educational, charitable, and religious association or institution not used or held for profit;
    - c. A government entity, which includes foreign government, a consul or any other official representative of a foreign government, the United States, a state or political subdivision of a state, or an Indian tribal government;
    - d. A nonresident military member;
    - e. A public health services officer;
    - f. A Supplemental Security Income recipient;
    - g. A survivor of a fallen first responder or a fallen military member;
    - h. A U.S. Department of Veterans Affairs grant recipient who qualifies for an exemption from the vehicle license tax pursuant to A.R.S. § 28-5802;
    - i. A veteran who is certified by the U.S. Department of Veterans Affairs to be 100% with a disability and drawing applicable compensation; or
    - j. A widow or widower who qualifies for an exemption of taxation of property pursuant to A.R.S. § 42-1111.
  2. The owner or lessee of the following shall pay a reduced fee of \$5:
    - a. A registered street legal golf cart, or
    - b. A registered street legal off-highway vehicle that is eligible for the reduced vehicle license tax pursuant to A.R.S. § 28-5801.
  3. The owner or lessee of a vehicle that is part of the International Registration Plan shall pay an apportioned fee based on the International Registration Plan.
  4. All other vehicle owners or lessees shall pay a fee of \$32.
- C.** If a vehicle is owned by more than one owner or lessee prescribed under subsections (B)(1)(d), (e), (f), (g), or (j), the fee of \$0 applies only to the qualified person and the fee as determined in subsection (B)(4) is applied proportionally to any additional owner or lessee.
- D.** If an owner or lessee prescribed under subsections (B)(1)(f), (g), (h), (i), or (j) owns or leases more than one vehicle, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
- E.** If an owner or lessee prescribed under subsection (B)(1)(a) owns or leases more than two vehicles, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
- F.** The public safety fee shall be specified and available on the Department's website at [www.azdot.gov](http://www.azdot.gov) and detailed on the registration renewal notice for the vehicle.
- G.** The fee is non-transferable.
- H.** The fee is nonrefundable, except the Department will issue a credit or refund for any public safety fee paid for any registration year that begins on or after July 1, 2021.

**Historical Note**

Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4). Amended by exempt rulemaking at 24 A.A.R. 3512,

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effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2). Section repealed; new Section made by exempt rulemaking at 25 A.A.R. 2261, with an effective date of August 19, 2019 (Supp. 19-3).

**R17-4-314. Transferred****Historical Note**

Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

**R17-4-315. Transferred****Historical Note**

Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

**R17-4-316. Transferred****Historical Note**

Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

**R17-4-317. Transferred****Historical Note**

Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

**R17-4-318. Transferred****Historical Note**

Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

**R17-4-319. Transferred****Historical Note**

Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

**R17-4-320. Transferred****Historical Note**

Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

**R17-4-321. Transferred****Historical Note**

Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

**R17-4-322. Transferred****Historical Note**

Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

**R17-4-323. Transferred****Historical Note**

Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

**R17-4-324. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-325. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-326. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-327. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-328. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-329. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-330. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

**R17-4-331. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

**R17-4-332. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

**R17-4-333. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

**R17-4-334. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

**R17-4-335. Transferred****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective Octo-

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ber 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

**R17-4-336. Transferred****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

**R17-4-337. Transferred****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403 renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

**R17-4-338. Transferred****Historical Note**

Transferred to R17-1-338 (Supp. 92-4).

**R17-4-339. Transferred****Historical Note**

Transferred to R17-1-339 (Supp. 92-4).

**R17-4-340. Transferred****Historical Note**

Transferred to R17-1-340 (Supp. 92-4).

**R17-4-341. Transferred****Historical Note**

Transferred to R17-1-341 (Supp. 92-4).

**R17-4-342. Transferred****Historical Note**

Transferred to R17-1-342 (Supp. 92-4).

**R17-4-343. Transferred****Historical Note**

Transferred to R17-1-343 (Supp. 92-4).

**R17-4-344. Transferred****Historical Note**

Transferred to R17-1-344 (Supp. 92-4).

**R17-4-345. Transferred****Historical Note**

Transferred to R17-1-345 (Supp. 92-4).

**R17-4-346. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

**R17-4-347. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

**R17-4-348. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

**R17-4-349. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

**R17-4-350. Rental Vehicle Surcharge Reimbursement**

**A.** Definitions. In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

“Person” means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

“Previous year” means the prior calendar year, January 1 through December 31.

“Rental revenue” means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

“Surcharge” means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

“Vehicle License Tax” means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

**B.** Reports. Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:

1. Address where business records are secured;
2. Name, title, phone number, and signature of the person authorized to sign the form;
3. Business name;
4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
5. Name, title, phone number, mailing address, and e-mail address of the contact person;
6. Federal Employer Identification Number (FEIN);
7. Mailing address (if different from principal business address);
8. Principal business address;
9. Rental vehicle revenue collected, by county;

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10. Total Arizona Vehicle License Tax paid on rental vehicles;
  11. Total rental vehicle revenue collected;
  12. Total surcharge collected;
  13. Total surcharge due to the Department; and
  14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.
- C. Records. A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:
1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
    - a. The Vehicle Identification Number,
    - b. The Arizona vehicle license plate number,
    - c. A copy of the Arizona registration,
    - d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
    - e. The date on which the Vehicle License Tax was paid, and
    - f. The dates the rental vehicle was in and out of service.
  2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
    - a. The rental contract for each rental vehicle,
    - b. The amount of surcharge collected,
    - c. Chart of accounts,
    - d. General ledger,
    - e. Financial statements,
    - f. Federal tax returns, and
    - g. Monthly trial balance.
  3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
    - a. All applicable rental contracts; and
    - b. The total amount stated in each rental contract, supported by relevant documentation.
  4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.
- D. Audits. The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at <http://www.gao.gov/yellowbook> or can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits

at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.

2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

**R17-4-351. Special License Plate; Definition**

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

**R17-4-352. Duplicate Special License Plate; Fee**

- A. The Department shall charge and collect from a motor vehicle owner a one-time fee of \$10 for each duplicate special license plate requested.
- B. The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

**ARTICLE 4. DRIVER LICENSES****R17-4-401. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Financial responsibility (accident) suspension" means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

"Gore area" is defined under A.R.S. § 28-644.

"Proof the vehicle was sold" means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;

The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

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A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

- Between the person's home and workplace,
- During the person's work-related activities, or
- Between the person's home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

- Between the person's home and workplace;
- During the person's work-related activities; or
- Between the person's home and school.

"State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

"Thirty-six-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

"Twelve-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

"Twenty-four-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

"VIN" or "vehicle identification number" is defined under A.R.S. § 13-4701(4).

"Withdrawal action" means a Department action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration, which includes:

- A cancellation;
- A suspension;
- A revocation;
- Any outstanding warrant; or
- Any unresolved citation.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

#### R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

- A. An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
  2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
  3. Pay the \$10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
  4. Pay the \$25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if

the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;

5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
  6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).
- B. In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
    - a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
    - b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
  2. Obtain a duplicate Arizona driver license by paying the \$12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).
- C. At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

#### Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

#### R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

- A. An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.
- B. The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is \$12 under A.R.S. §§ 28-3002(A) and 28-3165.

#### Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

#### R17-4-404. Driver Point Assessment; Traffic Survival Schools

- A. Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.
- B. Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
  2. Suspend the driver's Arizona driver license or driving privilege.
- C. Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
    - a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and

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- b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.
- 2. The Department shall record that a driver completed traffic survival school if:
  - a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
  - b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
- D. Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
  - 1. Specify the period within which the driver may submit a hearing request to the Department, and
  - 2. Specify the effective date of the suspension.
- E. Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
  - 1. Specify the length of the suspension as follows:
    - a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
    - b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
    - c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
    - d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
  - 2. Specify the period within which the driver may submit a hearing request to the Department; and
  - 3. Specify the effective date of the suspension.

**Historical Note**

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1) Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

**Table 1. Driver Point Valuation**

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6

- A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person. 6
- A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person. 4
- A.R.S. § 28-701, reasonable and prudent speed. 3
- A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area. 3
- Any other traffic regulation that governs a vehicle moving under its own power. 2

**Historical Note**

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

**R17-4-405. Emergency Expired**

**Historical Note**

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

**R17-4-406. Minor's Application for Permit or License**

- A. For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
  - 1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
  - 2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
  - 3. "Parent" means the natural or adoptive father or mother of a child.
- B. Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.
- C. Procedure when only one parent signs:
  - 1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
  - 2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
  - 3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.
- D. Procedure when both parents are deceased:
  - 1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court judgment, affidavits of close relatives of the child, or school records.

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2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
  3. An employer signing the application shall certify the person employs the minor on the date of application.
  4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.
- E. Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

**R17-4-407. Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee**

- A. A person seeking a travel-compliant driver license or travel-compliant identification license shall meet and comply with all:
1. State laws and rules applicable to every applicant who seeks issuance of any other driver license class, type, endorsement or non-operating identification license issued by the Department; and
  2. Federal laws and regulations regarding the application and minimum documentation, verification, and card issuance requirements prescribed in the most recent edition of 6 CFR 37.11 for establishing satisfactory proof of a person's identity, date of birth, social security number, principal residence address of domicile in this state, and lawful status in the United States.
- B. A person seeking a travel-compliant driver license or travel-compliant identification license shall:
1. Apply to the Department using an application form provided by the Department; and
  2. Submit to the Department for authentication, satisfactory proof of the applicant's full legal name, date of birth, sex, social security number, principal residence address of domicile in this state, and that the applicant's presence in the United States is authorized under federal law. A list of all source documents the Department may accept as satisfactory proof under state and federal law is maintained by the Department on its website at [www.azdot.gov](http://www.azdot.gov).
- C. An applicant for a travel-compliant driver license or travel-compliant identification license shall submit to the Department a fee of \$25:
1. On original application, reinstatement, or renewal of any travel-compliant driver license class; or
  2. On original application or renewal of a travel-compliant identification license.

- D. A travel-compliant driver license or travel-compliant identification license issued by the Department, as prescribed under A.R.S. § 28-3175 and this Section, is:
1. Valid for a period of up to eight years;
  2. Renewable for successive periods of up to eight years; and
  3. Subject to all state and federal laws or restrictions requiring the issuance of a shorter expiration period (e.g., up to age 65, as provided under A.R.S. § 28-3171, or for a time period equal to the applicant's authorized stay in the United States, as provided under 6 CFR 37.21, etc.).

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

**R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order**

- A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).
- B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.
- C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-409. Non-operating Identification License Application; Applicability; Fee**

- A. A person seeking a non-operating identification license, issued by the Department as prescribed under A.R.S. § 28-3165 and this Section, shall apply to the Department using a form provided by the Department.
- B. An applicant shall submit a \$12 fee to the Department, on application for a non-operating identification license, unless

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the applicant is provided a specific statutory exemption from payment of the fee.

- C. An applicant shall provide to the Department, on application for a non-operating identification license, satisfactory proof of the applicant's full legal name, date of birth, sex, principal residence address of domicile in this state, and evidence that the applicant's presence in the United States is authorized under federal law as listed by the Department on its website at [www.azdot.gov](http://www.azdot.gov).
- D. A person seeking a travel-compliant identification license issued by the Department under A.R.S. § 28-3175, which is recognized by federal agencies as proof of identity for use when accessing federal facilities, boarding federally-regulated commercial aircraft, or entering nuclear power plants, shall apply to the Department as provided under R17-4-407.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Amended by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

**R17-4-410. Voter Registration Through the Motor Vehicle Division**

- A. For purposes of this Section:
1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
  2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.
- B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
  2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.
- C. Subsection (B) applies to the following license transactions:
1. Initial licensee application;
  2. License renewal;
  3. Duplicate driver license; or
  4. Licensee personal information update.
- D. MVD shall transfer the voter registration forms and the data collected under this Section by:
1. Mailing the completed hardcopy forms to the appropriate county recorder; and
  2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

- E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

**R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee**

- A. In addition to the requirements prescribed in A.R.S. § 28-3158, an person applying for a special ignition interlock restricted driver license shall:
1. If the person is suspended for a first offense of A.R.S. § 28-1321:
    - a. Complete at least 90 consecutive days of the period of the suspension, and
    - b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
  2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
    - a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
    - b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
    - c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
  3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
    - a. Comply with the restrictions in subsection (C), and
    - b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.
- B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).
- C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:
1. Age 50 or older \$10.00
  2. Age 45 – 49 \$15.00
  3. Age 40 – 44 \$20.00
  4. Age 39 or younger \$25.00
- D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).
- E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
1. Date installed;
  2. Person's full name;

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3. Person's date of birth;
  4. Person's customer or driver license number;
  5. Installer and manufacturer name;
  6. Installer fax number;
  7. Date report interpreted;
  8. Report period;
  9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
  10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
  11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
  12. Any other information required by the Director.
- F.** A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

**R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions**

- A.** Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:
1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
  2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
  3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.
- B.** Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.
- C.** Burden of proof and presumptions.
1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
- D.** Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

**R17-4-413. Lifetime Disqualification Reinstatement**

- A.** Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
- "CDL" means Commercial Driver License.
- "Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
- "Permanently disqualified" means the individual will never be able to obtain a commercial driver license.
- B.** Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
  2. The individual:
    - a. Is otherwise eligible for licensure.
    - b. Has continuously been eligible for a driver license during the most recent 10-year period.
    - c. Has not previously reinstated CDL privileges for another lifetime disqualification.
    - d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
      - i. Driving while under the influence of alcohol or a controlled substance.
      - ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
      - iii. Refusal to submit to a blood alcohol concentration test.
      - iv. Leaving the scene of an accident.
      - v. Using a vehicle in the commission of a felony.
      - vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or

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- her commercial driving privileges are canceled, disqualified, suspended, or revoked.
- vii. Causing a fatality through the negligent operation of a commercial motor vehicle.
- C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.
- D. Permanent disqualification.
  1. An individual who reinstated his or her commercial driving privilege in accordance with this Section and who is subsequently given a lifetime disqualification under A.R.S. § 28-3312 is permanently disqualified.
  2. An individual convicted of using any vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance is permanently disqualified.
  3. An individual who more than once refuses a test in violation of A.R.S. § 28-1321 if the refusals involve more than one incident is permanently disqualified.
  4. An individual who more than once is convicted of violating A.R.S. § 28, Chapter 4, Article 3 is permanently disqualified.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

**R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing**

- A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.
- B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
  1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
  2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
    - a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
    - b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruc-

- tion permit for an applicant who currently possesses a valid Arizona commercial driver license.
- 3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.
- C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
  1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
  2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
  3. The Department shall send written notification of the action to the person describing the action taken by the Department.
- D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
  1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
  2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
  3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
  4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
  5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
    - a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
    - b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
  6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

**Historical Note**

Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

- R17-4-415. Reserved
- R17-4-416. Reserved
- R17-4-417. Reserved
- R17-4-418. Reserved
- R17-4-419. Reserved
- R17-4-420. Recodified

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**Historical Note**

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-421. Recodified****Historical Note**

Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-422. Recodified****Historical Note**

Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-423. Recodified****Historical Note**

Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-424. Recodified****Historical Note**

Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-425. Recodified****Historical Note**

Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-426. Recodified****Historical Note**

Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-427. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-428. Recodified****Historical Note**

New Section recodified from A.A.C. R17-3-403 at 7

A.A.R. 1260, effective February 20, 2001 (Supp. 01-1). Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-429. Reserved****R17-4-430. Reserved****R17-4-431. Reserved****R17-4-432. Reserved****R17-4-433. Reserved****R17-4-434. Reserved****R17-4-435. Recodified****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.01. Recodified****Historical Note**

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective

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January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.02. Recodified****Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.03. Recodified****Historical Note**

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.04. Recodified****Historical Note**

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.05. Recodified****Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.06. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-436. Recodified****Historical Note**

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13,

2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-437. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.01. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.02. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.03. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**Appendix A. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.04. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-438. Recodified****Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-439. Recodified****Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-440. Recodified****Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-441. Reserved****R17-4-442. Reserved****R17-4-443. Reserved****R17-4-444. Repealed**

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**Historical Note**

Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

**R17-4-445. Recodified****Historical Note**

Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-446. Recodified****Historical Note**

Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-447. Recodified****Historical Note**

Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-448. Recodified****Historical Note**

Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-449. Reserved****R17-4-450. Repealed****Historical Note**

New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-451. Repealed****Historical Note**

New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-452. Repealed****Historical Note**

New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-453. Repealed****Historical Note**

New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-454. Repealed****Historical Note**

New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-455. Repealed****Historical Note**

New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-456. Repealed****Historical Note**

New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-457. Repealed****Historical Note**

New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-458. Repealed****Historical Note**

New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-459. Repealed****Historical Note**

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-460. Repealed****Historical Note**

New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-461. Repealed****Historical Note**

New Section recodified from R17-4-422 at 7 A.A.R.

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3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-462. Repealed****Historical Note**

New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-463. Repealed****Historical Note**

New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-464. Repealed****Historical Note**

New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-465. Repealed****Historical Note**

New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-466. Repealed****Historical Note**

New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-467. Repealed****Historical Note**

New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**ARTICLE 5. SAFETY****R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

“Application” means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Department to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license or driving privileges; or

Require an examination or evaluation of an applicant or licensee.

“Medical alert code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

A physician who is a surgeon or a psychiatrist,

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body or to patients with a specific age range, or

A psychologist.

“Substance abuse” means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

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“Successful completion of an examination” means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required tests.

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely****A. Screening process for safe operation of a motor vehicle.**

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license shall successfully complete all required examinations or obtain an evaluation if:
  - a. The Department informs the applicant that the applicant’s responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
  - b. The applicant comes under subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d).
3. An applicant for license renewal shall successfully complete an examination or obtain an evaluation if the applicant’s responses to the medical screening questions indicate that since the applicant’s last driver license issuance:
  - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
  - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
4. As soon as a licensee’s medical condition allows, the licensee shall notify the Department, in writing, that a medical condition exists not previously reported to the Department that may affect the licensee’s functional ability. On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation.

**B. Evaluation.** An applicant or licensee shall submit to an evaluation as required by the Department.

1. The Department shall require an evaluation if the Department notifies the applicant or licensee in writing that:
  - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
  - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;

- c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Department personnel; or
  - d. A person with direct knowledge submits to the Department written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit timely an evaluation report on a form provided by the Department to the Department’s Medical Review Program.
  3. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.
- C. Licensing action.** The Department shall take a licensing action after requiring an applicant or licensee to complete an examination successfully or obtain an evaluation and submit an evaluation report.
1. The Department shall deny a driver license if an applicant or licensee:
    - a. Fails to complete successfully an examination; or
    - b. Fails to:
      - i. Obtain an evaluation; or
      - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Department within 30 days after the Department notifies the applicant that an evaluation is required; or
    - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
  2. The Department shall summarily suspend an applicant’s or licensee’s driving privileges under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (C)(1).
  3. The Department shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant or licensee that:
    - a. Unless the Department receives the applicant or licensee’s timely hearing request under subsection (E), the revocation becomes effective:
      - i. Fifteen days after the date the applicant or licensee is personally served with the notice, or
      - ii. Twenty days after the date the notice is mailed to the applicant or licensee.
    - b. An applicant or licensee who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.
  4. The Department shall issue a driver license or shall not suspend or revoke an applicant or licensee’s driving privileges if:
    - a. The applicant or licensee successfully completes all required examinations and the Department does not require an evaluation, or
    - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- D. Driver license restrictions.** If an applicant or licensee uses an adaptation, including those listed below, to demonstrate functional ability during an examination, the Department shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant’s or licensee’s driving record:

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1. Automatic transmission,
  2. Hand dimmer switch,
  3. Left-foot gas pedal,
  4. Parking-brake extension,
  5. Power steering,
  6. Power brakes,
  7. Six-way power seat,
  8. Right-side directional signal,
  9. A device that enables an operator to spin the steering wheel,
  10. A device that enables full foot control,
  11. Dual outside mirrors,
  12. Chest restraints,
  13. Shoulder restraints,
  14. A device that extends pedals,
  15. A device that enables full hand control,
  16. Adapted seat, and
  17. Prosthetic aid.
- E. Hearings. 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.
- F. The Department shall not release information required to be submitted to the Department under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

**Historical Note**

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

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

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

**R17-4-503. Vision Standards****A. Definitions.**

1. "Binocular vision" means the ability to see in both eyes.
  2. "Bioptic telescopic lens system" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
  3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
  4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
  5. "Diplopia" means double vision.
  6. "Impaired night vision" means below normal ability to see in reduced light.
  7. "Monocular vision" means the ability to see in one eye only.
  8. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
  9. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
  10. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
  11. "Visual acuity" means the clarity of a person's vision.
  12. "Visual field" means the area in which objects may be seen when the eye is fixed.
- B. Standard.** The following applies only to class D, G, or M applicants or licensees.
1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
    - a. The Department shall not license a person with monocular vision and visual acuity of 20/50 or greater.
    - b. The Department shall not license a person with binocular vision and visual acuity of 20/70 or greater.
  2. Visual field. Visual field shall be 70 degrees or greater temporally, and 35 degrees or greater nasally, in at least one eye.
- C. Restrictions.**
1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
  2. The Department shall restrict a person with diagnosed impaired night vision to daytime driving only.
  3. The Department shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
- D. Screening process.**
1. The Department, a physician, or an optometrist may administer visual acuity and visual field screening through the use of visual screening equipment or the Snellen Chart to determine if a person's visual acuity meets minimum standards and through the use of visual screening equipment to determine if a person's visual field meets minimum standards.
  2. A person may use a bioptic telescopic lens system during vision screening.
    - a. Beginning on the date of an initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Department an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
    - b. The Department shall not license a person using a bioptic telescopic lens system unless the person submits to the Department a vision examination form provided by the Department and completed by a physician or an optometrist indicating that the individual meets the visual acuity standard as prescribed in subsection (B).
    - c. The Department shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.
- E. Reporting requirements.**
1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Department.
  2. If the Department does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Department shall require the person to submit the results of the person's visual acuity and visual field screening by a physician or an optometrist.
  3. The Department shall require a person diagnosed with any of the following conditions to file the results of the

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person's visual acuity and visual field screening completed by the physician or optometrist:

- a. Any progressive eye disease,
  - b. Diplopia, or
  - c. Impaired night vision.
- F.** Results of visual acuity and visual field screening from a physician or optometrist shall contain the following.
1. An examination date no more than three months before the submission date to the Department;
  2. Visual acuity and visual field;
  3. If applicable, specification that the person is monocular;
  4. If applicable, diagnosis of any condition described in subsection (E)(3);
  5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Department;
  6. Suggested restrictions on driving, in addition to those required by the Department; and
  7. Any recommendations on the person's ability to safely operate a motor vehicle.
- G.** The Department shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.

**Historical Note**

New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-504. Medical Alert Conditions**

- A.** Definition. In this Section, "license" means any class of driver license, commercial driver license, non-operating identification license, or instruction permit.
- B.** Medical alert condition displayed on license. The Department will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C.** Retention of medical alert condition authorization. The Department will not maintain the medical alert code on the Department computer record unless written authorization is submitted.
- D.** A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Department to maintain the medical alert code on the Department computer record.

**Historical Note**

Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-505. Repealed****Historical Note**

Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective

August 10, 2001 (Supp. 01-3).

**R17-4-506. Neurological Standards**

- A.** Driver license application.
1. A person who has a seizure in the three months before applying for a driver license shall undergo an evaluation as provided in R17-4-502.
  2. After the evaluation under R17-4-502, the person or the person's physician shall submit the medical examination report to the Department.
  3. The Department shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.
- B.** Driver license revocation.
1. A person with a driver license or nonresident driving privileges who experiences a seizure shall cease driving and:
    - a. Undergo an evaluation as provided in R17-4-502;
    - b. Submit the medical examination report to the Department; and
    - c. Undergo a follow-up evaluation within one year after the seizure or within a shorter time, as recommended by a physician.
  2. After each evaluation, the person or the person's physician shall submit the applicable medical examination report to the Department.
  3. The Department shall revoke a person's driver license or nonresident driving privileges if any medical examination report shows the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.
- C.** Medical examination report. A medical examination report under this Section shall include the following information:
1. Age at onset of seizures, diagnosis, and history;
  2. Aftereffects of seizures;
  3. EEG findings, if any;
  4. Description, cause, frequency, duration, and date of most recent seizure;
  5. Current medications, including dosage, side effects, and serum level; and
  6. A physician's medical opinion as to whether the neurological disorder will affect the person's ability to operate a motor vehicle safely.
- D.** Physician's medical opinion. A neurological disorder does not affect a person's ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:
1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
  2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
  3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
  4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

**Historical Note**

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2). Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June

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29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3). Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-507. Repealed****Historical Note**

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Section repealed by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-508. Commercial Driver License Physical Qualifications****A. Requirements.**

1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner's certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43 to the Department.
  - a. Except as provided in subsection (A)(1)(c), the medical examiner's certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A list of certified medical examiners is available on the National Registry website at <https://nationalregistry.fmcsa.dot.gov>.
  - b. The medical examiner's certificate must be completed upon the applicant's initial application and upon or prior to expiration of the applicant's current medical examiner's certificate.
  - c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee's current medical examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee's medical condition allows.

- B. Commercial driver license suspension and revocation notification procedure. To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner's certificate's due date or actual submission date to the licensee's address of record that:
  1. Suspends the licensee's commercial driver license beginning on the notice's date; and
  2. Revokes the licensee's commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).
- C. Noncompliance actions.
  1. Initial application denial. If an applicant's initial medical examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant's address of record.
  2. Medical examiner's certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:
    - a. No medical examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
    - b. An incomplete medical examiner's certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department's letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.
- D. A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner's certificate prescribed under subsection (A)(1).
- E. Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

**Historical Note**

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by

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final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-509. Repealed****Historical Note**

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R17-4-510. Motorcycle Noise Level Limits**

The Department incorporates by reference 40 CFR 205.152 and 205.166, revised as of July 1, 2019, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160952975.

**Historical Note**

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-511. Repealed****Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

**R17-4-512. Child Restraint Systems in Motor Vehicles**

The Department incorporates by reference the Federal Motor Vehicle Safety Standards for child restraint systems under 49 CFR 571.213, revised as of October 1, 2019, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160954894.

**Historical Note**

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3).

Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

**R17-4-513. Emergency Expired****Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

**R17-4-514. Emergency Expired****Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

**R17-4-515. Reserved****R17-4-516. Reserved****R17-4-517. Reserved****R17-4-518. Reserved****R17-4-519. Reserved****R17-4-520. Recodified****Historical Note**

Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-521. Recodified****Historical Note**

Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-522. Recodified****Historical Note**

Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**ARTICLE 6. EXPIRED****R17-4-601. Reserved****R17-4-602. Reserved****R17-4-603. Reserved****R17-4-604. Reserved****R17-4-605. Reserved****R17-4-606. Repealed****Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8,

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1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

**R17-4-607. Repealed****Historical Note**

Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments re-adopted effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

**R17-4-608. Expired****Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-609. Expired****Historical Note**

Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-610. Expired****Historical Note**

Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-611. Expired****Historical Note**

Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-612. Expired****Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by

summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT****R17-4-701. Definitions**

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

“Applicant” means an individual who applies to obtain an original or renewal HME.

“CDL” means commercial driver license.

“Department” has the same meaning as defined under A.R.S. § 28-101.

“HME” means Hazardous Materials Endorsement.

“Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

“Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

“TSA” means the U.S. Transportation Security Administration.

**Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**Appendix A. Recodified****Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-702. Scope**

This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160935534.

**Historical Note**

Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007

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(Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-703. Expired****Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

**R17-4-704. Requirements for an HME**

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

**Historical Note**

Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-705. Required Testing**

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

**Historical Note**

Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-706. Fees**

All applicants and transfer applicants shall pay all applicable fees as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

**Historical Note**

Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018

(Supp. 18-2).

**R17-4-707. 60-Day Notice to Apply**

- A. The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
- B. Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

**Historical Note**

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-708. Security Threat Assessment**

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
  1. Cancellation,
  2. Suspension for a period of one year or more,
  3. Expiration for a period of one year or more, and
  4. Revocation for a period of one year or more.

**Historical Note**

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-709. Determination of Security Threat**

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
  - a. The Department will deny the request for an HME; and
  - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
  - a. The Department shall immediately cancel the HME.
  - b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
  - c. The applicant shall visit a CDL office for removal of the HME.
  - d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
  - e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

**Historical Note**

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maxi-

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maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-709.01. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.02. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.03. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.04. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.05. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.06. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix A. Recodified****Historical Note**

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a

maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix B. Recodified****Historical Note**

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix C. Recodified****Historical Note**

Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.07. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.08. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.09. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Exhibit A. Recodified****Historical Note**

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading "Form

## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

A” changed to “Exhibit A” to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Exhibit B. Recodified****Historical Note**

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.10. Recodified****Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-710. Requests for Administrative Hearing**

- A.** In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.
- B.** An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

**R17-4-711. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

**R17-4-712. Transfer Applicant**

- A.** Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.
- B.** Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:
1. Verify the TSA approval of a Determination of No Security Threat;
  2. Issue an Arizona CDL with an HME; and
  3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new Security Threat Assessment and testing requirements under R17-4-705.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

ive May 1, 2018 (Supp. 18-2).

**Table A. Recodified****Historical Note**

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

**ARTICLE 8. MOTOR VEHICLE RECORDS****R17-4-801. Definitions**

“Batch” means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

“Commercial driver license record” has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person with a record on the Department’s database, which includes the driver license number assigned to a person for a driver license, identification card, or instruction permit.

“Driver record” means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

“Interactive” means an electronic query-command method individually initiated by a person that produces immediate results.

“Reasonable costs” has the same meaning as defined in A.R.S. § 12-351.

“Requester” means the person, as defined in A.R.S. § 41-1001, requesting a motor vehicle record.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Support document” means any customer record maintained by the Department in an electronic, hardcopy, or microfilm file storage format.

“Title and registration record” means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**R17-4-802. Motor Vehicle Record Request**

- A.** Identification requirements. The requester of a motor vehicle record shall present valid identification as indicated on the motor vehicle record request form or at the request of the Department at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

- charge under R17-4-803, unless exempt under A.R.S. § 28-446.
- C. Motor vehicle record types. Under this Article, the Department may release any of the following motor vehicle record types:
    1. Title and Registration record, uncertified;
    2. Title and Registration record, certified;
    3. Driver 39-month record, uncertified;
    4. Driver five-year record, certified;
    5. Driver extended history record, certified;
    6. Special MVR, uncertified;
    7. Commercial driver license record, uncertified;
    8. Support documents, uncertified; and
    9. Support documents, certified.
  - D. Search Criteria. A requester who has a permissible use under A.R.S. § 28-455, except as indicated under subsection (E) when using the permissible use under A.R.S. § 28-455(C)(11), shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record. The requester may need to provide additional information as needed in order to locate the record.
    1. For a title and registration motor vehicle record:
      - a. Vehicle identification number,
      - b. License plate number, or
      - c. Vehicle owner's full name.
    2. For a driver motor vehicle record:
      - a. The full name of the person whose record is requested, or
      - b. Customer number.
  - E. Consent to release motor vehicle record. A requester who uses the permissible use under A.R.S. § 28-455(C)(13) shall present a properly signed Consent To Release Motor Vehicle Record - One-Time form from the person whose motor vehicle record is requested. A requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall present a properly signed Consent To Release Motor Vehicle Record - General form from the person whose motor vehicle record is requested if that person has not previously submitted this form to the Department. In addition, a requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall provide the items of information listed in this subsection. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Authorized Third Party Provider offices and online at <https://www.azdot.gov>.
    1. For a title and registration motor vehicle record:
      - a. Two items under subsection (D)(1), and
      - b. The vehicle owner's residence address.
    2. For a driver motor vehicle record:
      - a. The name and customer number of the person whose record is requested, and
      - b. The person's date of birth, or
      - c. The person's address, or
      - d. The person's Arizona driver license expiration date.
  - F. General consent to release information. The Department shall record a person's general consent to release information on the person's driver and title and registration records.
    1. The general consent to release information is valid until revoked, in writing, by the person.
    2. A person may submit the written notice of revocation:
      - a. In person, at a Customer Service office or Authorized Third Party Provider; or
      - b. By mail, to Motor Vehicle Division, P.O. Box 2100, Mail Drop 500M, Phoenix, AZ 85001-2100.
  - G. Insurance companies requesting a driver record. The Department shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

**Historical Note**

Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**R17-4-803. Record Copy Charges**

In accordance with A.R.S. §§ 12-351 and 28-446, for each separate request, the Department shall assess a charge as provided in Table 1. Certified and Uncertified Motor Vehicle Record Fees. Therefore, a fee is collected if the request results in a motor vehicle record or "No Record Found."

**Historical Note**

New Section made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**Table 1. Certified and Uncertified Motor Vehicle Record Fees**

Description	Method of Delivery	Amount
A certified record:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	\$5
	Electronic batch.	\$3
A certified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	\$5
An uncertified record:	Over-the-counter immediate service; Mail-in request; or Electronic interactive.	\$3
	Electronic batch; or Over-the-counter drop-off service.	\$2
An uncertified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	\$3
An uncertified Special MVR:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	\$1.50
Civil subpoena support documentation:	Served by a process server.	Reasonable costs

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Any photocopied item: (Does not include... etc.)	Over-the-counter immediate or drop-off service; or Mail-in request.	25¢ per page
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**Historical Note**

Table 1 made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

**R17-4-804. Repealed**

recodified to R17-1-504 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Repealed effective November 21, 1995 (Supp. 95-4).

**R17-4-805. Recodified****R17-4-905. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-505 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-906. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-506 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-806. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-703 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-907. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-507 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-807. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-704 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-908. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-508 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-808. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-705 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-909. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-509 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**ARTICLE 9. RESERVED****R17-4-901. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-59 renumbered without change as Section R17-4-901 (Supp. 87-2). Former Section R17-4-901 repealed, new Section R17-4-901 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-501 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-910. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-513 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-902. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Amended subsections (A), (E) and (F) effective April 4, 1984 (Supp. 84-2). Former Section R17-4-60 renumbered without change as Section R17-4-902 (Supp. 87-2). Former Section R17-4-902 repealed, new Section R17-4-902 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-502 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-911. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-511 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-912. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-512 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-903. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-503 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-913. Recodified****Historical Note**

Adopted as an emergency effective December 30, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Readopted as an emergency with a correction in subsection (A), paragraph (A) effective March 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Adopted without change as a permanent rule effective June 15, 1988 (Supp. 88-2). Amended

**R17-4-904. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section

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effective July 13, 1989 (Supp. 89-3). Section recodified to R17-1-510 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**Historical Note**

Former General Order 68. Former Section R17-4-26 renumbered without change as Section R17-4-914 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-914. Repealed**

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.

### 28-3103. Driver license endorsements

A. A driver license applicant shall obtain the following endorsements to the applicant's driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.
  2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department's safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:
    - (a) Conduct background checks in accordance with the transportation security administration procedures.
    - (b) Require that all hazardous materials endorsement applicants submit fingerprints.
  3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.
  4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.
  5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.
  6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.
- B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.
- C. On notification by the transportation security administration that an individual's authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver's commercial driver license.

28-5241. Out-of-service orders; violation; civil penalty; definition

A. A motor carrier shall not require or permit a driver:

1. To operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.
2. Who is subject to an out-of-service order to operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

B. A driver:

1. Shall not operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.
2. Who is subject to an out-of-service order shall not operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

C. Notwithstanding section 28-5240, a violation of this section is a civil traffic violation.

D. The court shall impose:

1. On a driver who violates or fails to comply with an out-of-service order a civil penalty of:

- (a) At least two thousand five hundred dollars for an initial violation or failure.
- (b) Five thousand dollars for a subsequent violation or failure.

2. A civil penalty of at least two thousand seven hundred fifty dollars and not more than twenty-five thousand dollars on a motor carrier who violates an out-of-service order or who requires or permits a driver to violate or fail to comply with an out-of-service order.

E. In addition to other penalties prescribed by this chapter, if a motor carrier or driver is found responsible for a violation of this section, the motor carrier or driver is subject to disqualification pursuant to section 28-3312.

F. For the purposes of this section, "out-of-service order" means a declaration by a specialty officer of the department or a law enforcement officer authorized pursuant to section 28-5204 that a driver, motor vehicle or motor carrier is out of service pursuant to this chapter.

**DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**

Title 20, Chapter 6, Articles 1-3, 18, 20, 23, Division of Insurance



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 17, 2021

**SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**  
Title 20, Chapter 6, Articles 1-3, 18, 20, and 23, Department of Insurance (now Division of Insurance)

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### Summary

This Five Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to rules in Title 20, Chapter 6, Articles 1-3, 18, 20, and 23, regarding the former Department of Insurance (now Division of Insurance).

The Articles address the following:

- **Article 1: Hearing Procedures and Rulemaking Petitions;**
- **Article 2: Transaction of Insurance;**
- **Article 3: Financial Provisions and Procedures;**
- **Article 18: Prepaid Dental Plan Organizations;**
- **Article 20: Captive Insurers; and**
- **Article 23: Threshold Rate Review - Individual Health Insurance.**

## Proposed Action

For each Article under review, the Department indicates the following.

- **Article 1:** The Department intends to amend the rules in this Article as soon as it receives an exception to the rulemaking moratorium from the Governor's office. The Department states that it is preparing its exception request and already drafted the rule package. **The Department states that it anticipates opening a docket by August 2021 if it gets a moratorium exception.**
  
- **Article 2:** For Article 2, the Department indicates the following:
  - **Sections R20-6-201.01, R20-6-201.02, R20-6-202, R20-6-203, R20-6-208 and R20-6-213:** In its 2016 5-Year Review Report, the Division proposed no course of action for these Sections. However, in the future, the Division will review the Article and replace "Department" with "Division" where functionally appropriate. No plans have been made at this time to engage in that exercise because no confusion appears to exist within the regulated community. Making those replacements will impact Sections R20-6-201.02, R20-6-202, and R20-6-203 of this group.
  
  - **Sections R20-6-209, R20-6-210, R20-6-211 and R20-6-214:** With regard to the non-substantive structural changes to these Sections to place the definitions subsection at the beginning of the rule for consistency throughout the Article or to alphabetize the definitions within these Sections, the Division proposes no course of action at this time because the proposed changes do not impact the effectiveness of the rules. These changes can be made when the Division reviews the Article to replace "Department" with "Division" where functionally appropriate. None of these Sections requires a replacement of the word "Department" with "Division."
  
  - **Section R20-6-201:** With regard to this Section, in its 2016 5-Year Review Report, the Division proposed to seek public input on the current types of advertising venues and methods to determine if and how the rule could be updated to reflect modern advertising. In addition, this Section uses the word "Department." At this time, the Division has no plans to pursue this course of action because it has not received any requests from insurers or the public to update this rule in the intervening 5-year period.
  
  - **Section R20-6-205:** With regard to this Section, in its 2016 5-Year Review Report, the Division proposed that this Section be amended to allow the Director to cap the tax liability for foreign insurers subject to Retaliatory Tax (A.R.S. § 20-230(A)). In addition, this Section uses the word "Department." Because the authorization to the Director is more

properly conferred in a statute, the Division has no plans to pursue this course of action through a rulemaking except to review this Section for replacement of “Department” with “Division” where appropriate.

- **Section R20-6-207:** With regard to this Section, in its 2016 5-Year Review Report, the Division proposed to amend certain subsections of this Section to align it with the Affordable Care Act ("ACA") which prohibits the use of gender as an underwriting criteria in major medical insurance policies. This Section does not use the word “Department.” At this time, the Division does not feel that these proposed changes are necessary. The Division has the ability to enforce the ACA pursuant to A.R.S. § 20-238. In addition, the Division has not received any information that insurers are using gender as an underwriting criteria in major medical policies. Therefore, no compliance or enforcement problems are occurring which would necessitate a change to the rule.
- **Sections R20-6-212 and R20-6-212.01:** On August 14, 2020, the Division opened a docket on these Sections to adopt updates to NAIC Model Regulation and Buyers Guide (26 A.A.R. 1634, August 14, 2020). As of the date of this report, it has not filed a Proposed Rulemaking because of delays at the NAIC in making the anticipated updates to the Model Regulation. The Division continues to monitor the NAIC’s activity and plans to file a Notice of Proposed Rulemaking prior to the expiration of the docket in August, 2020.
- **Article 3:** The Division [of Insurance] proposes to change the definitions for “Department” and “Director” found at Section R20- 6-307(B) to reflect the current name as the “Department of Insurance and Financial Institutions.” These changes are not scheduled at this time because no confusion appears to exist in the regulated community.
- **Article 18:** On March 29, 2021, the Division received an exemption from the rules moratorium from the Governor’s office. It plans to open a docket and publish a Notice of Proposed Rulemaking in the Arizona Register in June or July, 2021. The Notice of Proposed Rulemaking will incorporate the proposed changes from the 2016 5-Year Review Report where appropriate, reduce the frequency of some of the existing reporting requirements, and change references to reflect the new structure of the Division.
- **Article 20:** The Division proposes to correct the statutory reference in the rule from A.R.S. § 20-1098 to A.R.S. § 20-1098.01 (see Item 10). It does not propose to change “Department” in this rule because A.R.S. § 20- 101 establishes that the “Department” means the “Department of Insurance and Financial Institutions.” **The Division plans to pursue this change by December 2021.**

- **Article 23:** The Division proposes to make the suggested changes it identified in the 2016 5-Year Review Report and to change the definition of “Department” found at Section R20-6-2301(B)(1) to reflect the current name of “Department of Insurance and Financial Institutions – Division of Insurance.” **The Division plans to pursue these changes by March 2022.**

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes. For all of the Articles under review, the Department cites both general and specific statutory authority for the rules. Due to the number of applicable statutes, they are not included with the materials herein. The statutes can be found at: <https://www.azleg.gov/arsDetail/?title=20>.

**2. Summary of the agency’s economic impact comparison and identification of stakeholders:**

The stakeholders are: insurers, small businesses, and consumers.

In its previous 5YRR, the Department stated that it had not identified any rules that had an economic impact on any of the stakeholders, nor had the Department received any information of possible economic impacts of the rules. The Department determined that the Articles reviewed do not impose a greater economic impact or greater regulatory burden than what it determined in the previous five year review report.

In this 5YRR, the Department states that the language in Article 1 should be clarified so the public and the regulated community will better comprehend the rules. The Division intends to update the language in Article 1 in 2021.

The Department states that Article 2 definitions will need to be revised to clarify scope and better reflect current advertising practices. The Department intends to revise these at a later date.

The Department revised Article 3 in 2019 to allow insurers to provide comments on regulations, and provide more guidance to insurers for increased compliance. In this 5YRR, the Department states that no additional updates are needed at this time.

For Article 18, the Department states that reporting frequency for Dental Plan Organizations can be reduced from quarterly to annually, and plans to revise this rule later in 2021. The Department states that an annual report still meets the regulatory objective and will reduce costs for Dental Plan Organizations.

In the previous 5YRR, the Department planned to revise definitions associated with the rules in Article 20 and 23. However, the Department no longer intends to pursue these corrections. The Department states that the rules in their current form do not have any additional economic impact.

In this 5YRR, the Department does not identify any adverse economic impact on the Department, the regulated community, or the general public.

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

The Department states that the benefit of the rules in Article 1, 2, 3, 18, 20 and 23 outweigh the probable costs of the rules. The rules impose the least burden and costs necessary to achieve the regulatory objective. Any proposed changes to the rules will not impose any additional regulatory or economic burdens.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. For all of the Articles under review, the Department did not receive written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. For each Article under review, the Department indicates the following.

- **Article 1:** No. The Department indicates that the rules are outdated and may cause confusion to the regulated community. Further, the rules fail to address hearings that the Director is required to conduct that are not Administrative Procedure Act (APA) hearings.
- **Article 2:** Yes. The rules are clear, concise, and understandable.
- **Article 3:** Yes. The rules are clear, concise, and understandable.
- **Article 18:** Yes. The rules are clear, concise, and understandable.
- **Article 20:** Yes. The rules are clear, concise, and understandable.
- **Article 23:** Yes. The rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. For each Article under review, the Department indicates the following.

- **Article 1:** No. The rules are not consistent with other rules and statutes for the reasons specified in the report.
- **Article 2:** Yes. The rules are consistent with other rules and statutes.
- **Article 3:** Yes. The rules are consistent with other rules and statutes.
- **Article 18:** Yes. The rules are consistent with other rules and statutes.
- **Article 20:** No. One statutory citation in the rules is incorrect due to a statutory change.
- **Article 23:** Yes. The rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. For each Article under review, the Department indicates the following.

- **Article 1:** No. The Department indicates that the rules are ineffective for the reasons specified in the report.
- **Article 2:** Yes. The rules are effective in achieving their objectives.
- **Article 3:** Yes. The rules are effective in achieving their objectives.
- **Article 18:** Yes. The rules are effective in achieving their objectives.
- **Article 20:** Yes. The rules are effective in achieving their objectives.
- **Article 23:** Yes. The rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. For each Article under review, the Department indicates the following.

- **Article 1:** Yes. The rules are enforced as written.
- **Article 2:** Yes. The rules are enforced as written.
- **Article 3:** Yes. The rules are enforced as written.
- **Article 18:** Yes. The rules are enforced as written.
- **Article 20:** Yes. The rules are enforced as written.
- **Article 23:** Yes. The rules are enforced as written.

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

For each Article under review, the Department indicates the following.

- **Article 1:** No. There is no corresponding federal law(s) to the rules in this Article.
- **Article 2:** No. There is no corresponding federal law(s) to the rules in this Article.
- **Article 3:** No. There is no corresponding federal law(s) to the rules in this Article.
- **Article 18:** No. There is no corresponding federal law(s) to the rules in this Article.
- **Article 20:** No. There is no corresponding federal law(s) to the rules in this Article.
- **Article 23:** No. The Department states that the rules are not more stringent than the corresponding federal regulations governing Threshold Rate Review at 45 CFR Subtitle A (Part 154; §§ 154.101 through 154.301).

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

For each Article under review, the Department indicates the following.

- **Article 1:** The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.
- **Article 2:** The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.
- **Article 3:** The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.
- **Article 18:** The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.
- **Article 20:** The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.
- **Article 23:** The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.

## **11. Conclusion**

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056(A). Council staff notes that the Department is working on rule changes to Article 1 and plans to open a docket in August 2021 if it gets an exception from the rulemaking moratorium, is already pursuing changes to Article 18, plans to pursue changes to Article 20 by December 2021, and plans to pursue changes to Article 23 by March 2022.

For Articles 2, and 3, the Department indicates that it does not plan to pursue changes at this time because the issues identified for those Articles do not cause confusion in the regulated community, or that they do not impact the effectiveness of the rules. Council staff notes that the Department could possibly address these issues through expedited rulemaking.

Therefore, while Council staff recommends approval of this report, Council staff recommends that the Council discuss with the Department whether it could develop a timeframe to address issues in Articles 2 and 3 so that the rules therein would be more clear, concise, understandable, and effective.



**Director's Office**  
**Arizona Department of Insurance and Financial Institutions**  
**Insurance Division**

100 North 15<sup>th</sup> Avenue, Suite 261, Phoenix, AZ 85007-2624

Phone: (602) 364-3100 | Web: <https://difi.az.gov>

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

May 12, 2021

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

Nicole Sornsin

Governor's Regulatory Review Council

100 North 15<sup>th</sup> Ave., Suite 305

Phoenix, AZ 85007

**RE:** Arizona Department of Insurance and Financial Institutions  
Insurance Division  
Title 20, Chapter 6, Articles 1, 2, 3, 18, 20 and 23  
Five Year Review Report

Dear Chairperson Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department") for Title 20, Chapter 6, Articles 1, 2, 3, 18, 20 and 23 which is due on May 31, 2021.

The Department hereby certifies compliance with A.R.S. § 41-1091.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Savary", is written over a light grey rectangular background.

Jon Savary

Deputy Director

Arizona Department of Insurance and Financial  
Institutions, Insurance Division

**The Arizona Department of Insurance and Financial Institutions**

**Division of Insurance**

**Five-Year Review**

**A.A.C. Title 20, Chapter 6, Articles 1, 2, 3, 18, 20 and 23**

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance<sup>1</sup>

Article 1. Hearing Procedures and Rulemaking Petitions

May 31, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-161 (Authority to conduct hearings)

2. The objective of each rule:

Rule	Objective
<b>R20-6-101</b>	<b>Scope of Article; Definitions.</b> The objective of the rule is to clarify the scope of Title 20, Chapter 6, Article 1 of the Arizona Administrative Code (“A.A.C.”) so that the public and the regulated community will better comprehend it.
<b>R20-6-102</b>	<b>Appearance and Practice Before the Director.</b> The objective of the rule is to establish who may appear before the Director, the obligations of attorneys who appear before the Director, what constitutes contemptuous conduct and the hearing officer’s authority to deal with that conduct. The rule augments the Arizona Administrative Procedures Act (A.R.S. § 41-1001 and §§ 41-1091 through 41-1092.12) (“APA”).
<b>R20-6-103</b>	<b>Filing; Service.</b> The objective of the rule is to provide guidance for filing with and serving documents upon the Division.
<b>R20-6-106</b>	<b>Answer to Notice of Hearing.</b> The objective of the rule is establish requirements for filing an answer to a Notice of Hearing with the Division.
<b>R20-6-114</b>	<b>Request for Rehearing or Review.</b> The objective of the rule is to specify the procedures and grounds for obtaining a rehearing of a matter decided by the Director.
<b>R20-6-115</b>	<b>Response to Request for Rehearing.</b> The objective of the rule is to specify the manner and timeframe within which a party may file a response to a request for rehearing.
<b>R20-6-160</b>	<b>Petition for Rulemaking Action.</b> The objective of the rule is to set forth the requirements for a person to petition the Division for a rulemaking.

3. Are the rules effective in achieving their objectives?

Yes \_\_\_ No X\*

The rules are outdated and do not reflect the current practice of the Division. They may also be confusing to those looking to the rules for guidance.

<sup>1</sup> On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions (the “Department”). The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance (the “Division”).

In addition, the current rules fail to address the requirement in Title 20 that the Director make certain findings after a public comment hearing (for example to determine the services customarily provided in the transaction of insurance (see A.R.S. § 20-465) or whether a reasonable degree of price competition exists in the market (see A.R.S. § 20-383), etc.). Rules need to be established for these types of hearings to take public comment because they do not fall within the APA.

4. **Are the rules consistent with other rules and statutes?** Yes \_\_\_ No X\*

The rules are meant to augment the APA. However, the Division promulgated some of these rules prior to the enactment of the APA when the Division conducted hearings in-house. In addition, the rules need to be coordinated with the Financial Institutions Division hearing rules to reduce confusion and to promote consistency between the two Divisions of the agency.

5. **Are the rules enforced as written?** Yes X\* No \_\_\_

6. **Are the rules clear, concise, and understandable?** Yes \_\_\_ No X\*

Because the rules are outdated, they may cause confusion among the regulated community. In addition, the rules fail to address hearings that the Director is required to conduct that are not APA hearings.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

8. **Economic, small business, and consumer impact comparison:**

In its 2016 5-Year Review, the Division stated that it had not identified anything that has had an economic impact on insurers, small businesses, or consumers. In addition, it stated that it had not received any information of possible economic impacts of the rules. In the intervening period, the Division has not identified any adverse economic impact on the Division, the regulated community or the public.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In its 2016 5-Year Review Report, the Division proposed no course of action although it suggested that Sections R20-6-111 and 112 should be allowed to expire (see 2016 5-Year Review report, paragraph 6). By failing to review those rules in the 2016 report, they expired by operation of law pursuant to A.R.S. § 41-1056(J) (22 A.A.R. 3374, December 2, 2016; Effective May 31, 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:**

These rules in this Article have been in place for a long time and do not impose additional costs beyond the costs imposed by the APA because their intention is to provide guidance to parties subject to the APA. However, since the rules are outdated, the Division proposes to update the rules to make them more consistent with the rules used by the Financial Institutions Division. The rule changes are not intended to add any additional costs to parties subject to the APA. Instead, the rule changes should further clarify what is expected of parties subject to the APA. Therefore, the benefit of the rules in Article 1 outweigh the probable cost of the rules, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency's mission.

**12. Are the rules more stringent than corresponding federal laws?      Yes \_\_\_      No X**

No federal laws apply to the rules in this Article. These rules dovetail with and augment the APA.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules in this Article require the issuance of a regulatory permit, license or agency authorization.

**14. Proposed course of action**

The Department intends to run a rulemaking to update the rules in this Article and the rules governing the Division of Financial Institutions (Title 20, Chapter 4, Article 12), and Appraisal (Title 4, Chapter 46, Article 3.1) as soon as it receives an exemption from the rulemaking moratorium from the Governor's office. The request is being written and the rule package has been prepared. The Department anticipates opening a docket by August 2021 if no delays occur with the Governor's office.

\*This response applies to all the rules in the Article.

**Arizona Department of Insurance and Financial Institutions**

**5 YEAR REVIEW REPORT**

**Title 20. Commerce, Financial Institutions, and Insurance**

**Chapter 6. Department of Insurance<sup>2</sup>**

**Article 2. Transaction of Insurance**

**May 31, 2021**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 20-143: Rule-making power

Specific Statutory Authority:

Rule	Specific Authority
<b>R20-6-205. Local or Regional Retaliatory Tax Information</b>	A.R.S. § 20-230(A); Retaliation
<b>R20-6-207. Gender Discrimination</b>	A.R.S. § 20-142: Powers and duties of director; payment of examination and investigation costs; home health services A.R.S. § 20-448: Unfair Discrimination; Definitions
<b>R20-6-208. Group Coverage Discontinuance and Replacement</b> <b>R20-6-209. Life Insurance Solicitation</b> <b>R20-6-210. Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner</b> <b>R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness</b> <b>R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities</b> <b>R20-6-213. Life and Disability Insurance Policy Language Simplification</b>	A.R.S. § 20-142: Powers and duties of director; payment of examination and investigation costs; home health services A.R.S. §§ 20-441 through 20-460: Title 20, Chapter 2, Article 6: Unfair Practices and Frauds A.R.S. § 20-1110: Approval of Forms; Definition

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<sup>2</sup> On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions (the “Department”). The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance (the “Division”).

<p><b>R20-6-209. Life Insurance Solicitation</b>  <b>R20-6-210. Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner</b>  <b>R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness</b>  <b>R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities</b>  <b>R20-6-213. Life and Disability Insurance Policy Language Simplification</b></p>	<p>A.R.S. § 20-142: Powers and duties of director; payment of examination and investigation costs; home health services  A.R.S. § 20-1111: Grounds for disapproval of forms</p>
<p><b>R20-6-210. Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner</b>  <b>R20-6-213. Life and Disability Insurance Policy Language Simplification</b></p>	<p>A.R.S. § 20-142: Powers and duties of director; payment of examination and investigation costs; home health services  A.R.S. § 20-1110.01: Rules and regulations; form and readability of policies</p>

2. The objective of each rule:

Rule	Objective
<b>R20-6-201</b>	<b>Advertisements of Health.</b> This rule provides definitions and informs insurers of the types of statements that are deceptive and misleading when used by insurers in advertisements for disability insurance.
<b>R20-6-201.01</b>	<b>Insurer Advertising Responsibility and Records.</b> This rule recites requirements for maintaining a system of control over content, form and dissemination of advertisements, and sets forth recordkeeping requirements for advertisements.
<b>R20-6-201.02</b>	<b>Procedures for Filing Advertising Materials; Transmittal Form.</b> This rule informs insurers of the requirements and procedures for filing advertising materials and contents to be included in transmittal forms.
<b>R20-6-202</b>	<b>Advertising, Solicitation, and Transaction of Life Insurance.</b> This rule requires insurers to disclose relevant facts. It defines statements and omissions that are misleading and deceptive in the advertising, solicitation of and transaction of life insurance.
<b>R20-6-203</b>	<b>Form Filings; Translations.</b> This rule informs insurers of the requirements for filing English translations when a filed form contains verbiage in a language other than English.
<b>R20-6-205</b>	<b>Local or Regional Retaliatory Tax Information.</b> This rule informs insurers about how the Director will calculate additions to the rates of tax as required by A.R.S. § 20-230(A) and which must be included in retaliation calculations by foreign and alien insurers.
<b>R20-6-207</b>	<b>Gender Discrimination.</b> The objective of this rule is to prohibit unfair discrimination by insurers on the basis of gender or marital status in the terms and conditions of insurance contracts and underwriting criteria.
<b>R20-6-208</b>	<b>Group Coverage Discontinuance and Replacement.</b> This rule sets forth requirements for group coverage discontinuance and replacement.
<b>R20-6-209</b>	<b>Life Insurance Solicitation.</b> This rule requires that insurers provide to buyers of life insurance various materials and information to assist buyers in selecting appropriate policies.

<b>R20-6-210</b>	<b>Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner.</b> This rule establishes the readability standards for a variety of insurance policy types so that the insurance contract can be reasonably understood by a person without special knowledge or training in insurance.
<b>R20-6-211</b>	<b>Discrimination on the Basis of Blindness or Partial Blindness.</b> This rule prevents any unfair discrimination by insurers toward blind or partially blind persons in the rates charged, the availability of, and the terms and conditions of, insurance contracts.
<b>R20-6-212</b>	<b>Forms for Replacement of Life Insurance Policies and Annuities.</b> This rule provides the forms to be used in the replacement of life insurance policies and annuities by incorporating, by reference, the National Association of Insurance Commissioner's (NAIC) model regulations.
<b>R20-6-212.01</b>	<b>Forms for Buyer's Guide for Annuities.</b> This rule provides the forms to be used by insurers when providing a Buyer's Guide for annuities by incorporating, by reference, the NAIC Buyer's Guide.
<b>R20-6-213</b>	<b>Life and Disability Insurance Policy Language Simplification.</b> This rule establishes minimum standards for language used in life and disability policies to facilitate ease of reading.
<b>R20-6-214</b>	<b>Coordination of Benefits.</b> This rule informs insurers of the requirements for coordination of benefits.

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 this Article were either adopted or last amended on August 4, 2007. In its 2016 5-Year Review, the Division stated that it had not identified anything that has had an economic impact on insurers, small businesses, or consumers that was significantly different from that projected in the economic impact statement for the 2007 rulemaking. In the intervening period, the Division has not identified any adverse economic impact on the Division, the regulated community or the public.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In its 2016 5-Year Review Report, the Division proposed no course of action for Sections R20-6-201.01, R20-6-201.02, R20-6-202, R20-203, R20-6-208 and R20-6-213.

It proposed non-substantive structural changes to Sections R20-6-209, R20-6-210, R20-6-211 and R20-6-214 to place the definitions subsection at the beginning of the rule for consistency throughout the Article or to alphabetize the definitions within these Sections. It did not complete this course of action. The Division proposed changes to Section R20-6-204 but instead expired the Section. (23 A.A.R. 136, January 13, 2017; Effective December 15, 2016)

The Division failed to review Section R20-6-206 which expired by operation of A.R.S. § 41-1056(J). (22 A.A.R. 3374, December 2, 2016; Effective May 31, 2016)

The Division proposed amendments to Sections R20-6-201, R20-6-205 and R20-6-207 which it did not complete.

The Division proposed changes to Section R20-6-212 but not to Section R20-6-212.01. However, it opened a docket on these Sections to adopt anticipated changes to the NAIC Model Regulation and Buyers Guide (26 A.A.R. 1634, August 14, 2020). As of the date of this report, it has not filed a Proposed Rulemaking because of delays at the NAIC in making the anticipated updates to the Model Regulation. However, it plans to move forward with this rulemaking prior to the expiration of the docket on August 14, 2021.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

These rules in this Article have been in place since August 4, 2007 and do not impose additional costs beyond the costs initially imposed by the rules.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

No federal laws apply to the rules in this Article. .

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules in this Article require the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

**Sections R20-6-201.01, R20-6-201.02, R20-6-202, R20-6-203, R20-6-208 and R20-6-213.**

In its 2016 5-Year Review Report, the Division proposed no course of action for these Sections.

However, in the future, the Division will review the Article and replace “Department” with “Division” where functionally appropriate. No plans have been made at this time to engage in that exercise because no confusion appears to exist within the regulated community. Making those replacements will impact Sections R20-6-201.02, R20-6-202, and R20-6-203 of this group.

**Sections R20-6-209, R20-6-210, R20-6-211 and R20-6-214.**

With regard to the non-substantive structural changes to these Sections to place the definitions subsection at the beginning of the rule for consistency throughout the Article or to alphabetize the definitions within these Sections, the Division proposes no course of action at this time because the proposed changes do not impact the effectiveness of the rules. These changes can be made when the Division reviews the Article to replace “Department” with “Division” where functionally appropriate. None of these Sections requires a replacement of the word “Department” with “Division.”

**Section R20-6-201.**

With regard to this Section, in its 2016 5-Year Review Report, the Division proposed to seek public input on the current types of advertising venues and methods to determine if and how the rule could be updated to reflect modern advertising. In addition, this Section uses the word “Department.” At this time, the Division has no plans to pursue this course of action because it has not received any requests from insurers or the public to update this rule in the intervening 5-year period.

**Section R20-6-205.**

With regard to this Section, in its 2016 5-Year Review Report, the Division proposed that this Section be amended to allow the Director to cap the tax liability for foreign insurers subject to Retaliatory Tax (A.R.S. §20-230(A)). In addition, this Section uses the word “Department.” Because the authorization to the Director is more properly conferred in a statute, the Division has no plans to pursue this course of action

through a rulemaking except to review this Section for replacement of “Department” with “Division” where appropriate.

**Section R20-6-207.**

With regard to this Section, in its 2016 5-Year Review Report, the Division proposed to amend certain subsections of this Section to align it with the Affordable Care Act ("ACA") which prohibits the use of gender as an underwriting criteria in major medical insurance policies. This Section does not use the word “Department.” At this time, the Division does not feel that these proposed changes are necessary. The Division has the ability to enforce the ACA pursuant to A.R.S. § 20-238. In addition, the Division has not received any information that insurers are using gender as an underwriting criteria in major medical policies. Therefore, no compliance or enforcement problems are occurring which would necessitate a change to the rule.

**Sections R20-6-212 and R20-6-212.01.**

On August 14, 2020, the Division opened a docket on these Sections to adopt updates to NAIC Model Regulation and Buyers Guide (26 A.A.R. 1634, August 14, 2020). As of the date of this report, it has not filed a Proposed Rulemaking because of delays at the NAIC in making the anticipated updates to the Model Regulation. The Division continues to monitor the NAIC’s activity and plans to file a Notice of Proposed Rulemaking prior to the expiration of the docket in August, 2020.

\*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance<sup>3</sup>

Article 3. Financial Provisions and Procedures

May 31, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143: Rule-making power

Specific Statutory Authority:

Rule	Specific Authority
<b>R20-6-303. Termination of Certificate of Authority and Release of Deposit</b>	A.R.S. § 20-142: Powers and duties of director; payment of examination and investigation costs; home health services A.R.S. § 20-143; Rule-making power A.R.S. § 20-581; Deposits of insurers A.R.S. § 20-588; Release of deposits
<b>R20-6-310. Corporate Governance</b> <b>R20-6-310.01. Definitions</b> <b>R20-6-310.02. Filing Procedures</b> <b>R20-6-310.03. Contents of CGAD</b> <b>R20-6-310.04. Severability Clause</b>	A.R.S. § 20-492.02; Rules and orders Laws 2019, 1 <sup>st</sup> Reg. Sess., Ch. 180, § 2

2. The objective of each rule:

Rule	Objective
<b>R20-6-303</b>	<b>Termination of Certificate of Authority and Release of Deposit.</b> This rule provides for an orderly procedure for insurers to withdraw from the insurance business in Arizona and secure the release of deposits made pursuant to A.R.S. § 20-581 without placing policyholders, former policyholders or claimants in jeopardy.
<b>R20-6-307</b>	<b>Life and Disability Reinsurance Agreements.</b> This rule and Table A, which identifies significant risks, prevents an insurer that cedes life or disability insurance from reporting an increase in assets or a decrease in liabilities as a result of a reinsurance transaction if the reinsurance transaction does not provide for a transfer of insurance risk from the ceding insurer to the reinsurer. The rule also contains Table A which lists risk categories.
<b>R20-6-310</b>	<b>Corporate Governance.</b> This rule informs insurers of the purpose of the Corporate Governance rules.
<b>R20-6-310.01</b>	<b>Definitions.</b> The objective of this rule is to inform insurers of the meanings of the terms used in the Corporate Governance rules.

<sup>3</sup> On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions (the “Department”). The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance (the “Division”).

<b>R20-6-310.02</b>	<b>Filing Procedures.</b> The objective of this rule is to inform insurers of filing deadlines, the requirement of an attestation, the format of the Corporate Governance Annual Disclosure report ("CGAD"), criteria for determining the level of reporting, how existing documents can be referenced and subsequent filings of the report after the initial filing.
<b>R20-6-310.03</b>	<b>Contents of CGAD.</b> This rule provides guidance about what must be reported on the CGAD.
<b>R20-6-310.04</b>	<b>Severability Clause.</b> This rule ensures that portions of the rules that may be invalidated do not invalidate the entirety of the Corporate Governance rules.

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:**

Sections R20-6-303 and R20-6-307 are technical and procedural in nature. The Division enacted R20-6-303 in 2008 (14 A.A.R. 3432, August 29, 2008; Effective October 4, 2008) and last amended R20-6-307 on December 7, 1995. The Department has not identified anything that has happened in the past 5 years in conjunction with the adoption of the rules that has an economic impact upon insurers, small businesses or consumers. The information received to date by the Division stemming from its enforcement of the rules has included no comments or suggestions that the rule contributes to costs different from those projected by the Division when it sought to adopt or amend the rules.

The Division adopted Sections R20-6-310 through R20-6-310.04 through an exempt rulemaking in 2019 (25 A.A.R. 3715, December 27, 2019; immediate effective date). Because the rulemaking was exempt from Title 41, an Economic Impact Statement was not required. These rules adopt the National Association of Insurance Commissioner's (NAIC) Model Regulation on Corporate Governance (MDL #306). In 2019, the Arizona Legislature adopted the NAIC Model Act on Corporate Governance (MDL #305) at A.R.S. §§ 20-492 through 20-492.06. Both the NAIC Model Act and Model Regulation have been fully vetted at the NAIC giving insurers the opportunity to provide comments. The regulations do not impose any requirements upon insurers. Instead, they provide guidance to insurers so they can comply with the reporting requirements set out in statute.

The Division opened the docket (25 A.A.R. 3402, November 22, 2019) and published the Proposed Rulemaking (25 A.A.R. 3395, November 22, 2019) which allowed for a 10-day comment period. No one made a public comment or requested a hearing on the Proposed Rulemaking (Notice of Final Exempt

Rulemaking, 25 A.A.R. 3715, December 27, 2019; Item #11). On November 18, 2020, the Division submitted a 1-Year Review Report to the Council on this rulemaking.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In the 2016 5-Year Review Report for Sections R20-6-303 and R20-6-307, the Division proposed no course of action for these Sections.

For Sections R20-6-310 through R20-6-310.04, this report is the first 5-Year Review Report on these Sections.

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:**

For Sections R20-6-303 and R20-6-307, the rules benefits outweigh the probable costs of the rules. These rules have been in place for a long time (R20-6-303 enacted in 2008 and R20-6-307 last amended in 1995). The Division has not received any indication from insurers that the compliance costs imposed by the rules outweigh the probable benefits of the rules.

For Sections R20-6-310 through R20-6-310.04, these rule Sections are procedural in nature and do not impose any additional costs to regulated persons not already imposed by the Arizona Corporate Governance Act (A.R.S. §§ 20-492 through 20-492.06).

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

No federal laws apply to the rules in this Article. .

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules in this Article require the issuance of a regulatory permit, license or agency authorization.

**14. Proposed course of action**

The Division proposes to change the definitions for “Department” and “Director” found at Section R20-6-307(B) to reflect the current name as the “Department of Insurance and Financial Institutions.” These changes are not scheduled at this time because no confusion appears to exist in the regulated community.

\*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance<sup>4</sup>

Article 18. Prepaid Dental Plan Organizations

May 31, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143: Rule-making power

Specific Statutory Authority: A.R.S. § 20-142: Powers and duties of director; payment of examination and investigation costs; home health services

Prepaid Dental Plan Organizations Act: A.R.S. §§ 20-1001 through 20-1019

A.R.S. § 20-2510: Health care insurers requirements; medical directors

2. The objective of each rule:

Rule	Objective
<b>R20-6-1801</b>	<b>Definitions.</b> The purpose and objective of this rule is to establish definitions for Article 18.
<b>R20-6-1802</b>	<b>Application for Certificate of Authority.</b> This rule establishes requirements for application for a Certificate of Authority.
<b>R20-6-1803</b>	<b>Chief Executive Officer.</b> This rule establishes requirements for the chief executive officer.
<b>R20-6-1804</b>	<b>Dental Director.</b> This rule establishes the qualifications and functions of the dental director.
<b>R20-6-1805</b>	<b>Required Reporting.</b> This rule establishes the requirements for reporting changes in the written program of compliance and the information that must be submitted to the Division quarterly or annually.
<b>R20-6-1806</b>	<b>Basic Dental Services.</b> This rule identifies the basic dental services a dental plan must provide.
<b>R20-6-1807</b>	<b>System for Delivery of Services.</b> This rule establishes the requirements for a system for delivery of services, a plan for reducing wait times for new patients and a requirement to pay for emergency services.
<b>R20-6-1808</b>	<b>Geographic Areas.</b> This rule establishes the requirements for designating the geographic areas that will be served by the organization’s prepaid dental plan.
<b>R20-6-1809</b>	<b>Contract Requirements.</b> This rule establishes the requirements for the organization’s contracts with providers.
<b>R20-6-1810</b>	<b>Records.</b> This rule establishes the requirements for maintenance of member dental records and certain business records.
<b>R20-6-1811</b>	<b>Quality Improvement.</b> This rule require the establishment of a quality improvement committee and the standards for a quality improvement plan.

<sup>4</sup> On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions (the “Department”). The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance (the “Division”).

<b>R20-6-1812</b>	<b>Confidentiality of Records.</b> This rule establishes the requirements for confidentiality of records.
<b>R20-6-1813</b>	<b>Assignment of Members.</b> This rule establishes the requirements for assignment of members to providers.

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 Division adopted Article 18: Prepaid Dental Plan Organizations in 2002. The Division has not identified any economic impact that is significantly different from that projected in the economic impact for the original rulemaking.

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?**

#### **R20-6-1801. Definitions**

The Division proposed a change to this rule to replace the word "Chapter" with "Article" in the opening sentence.

The Division did not implement this proposed change.

#### **R20-6-1802. Application for Certificate of Authority**

The Division proposed deletion of subsections (C), (D) and (F) and renumbering of the remaining sections.

The Division did not implement these proposed changes.

**R20-6-1805. Required Reporting**

The Division proposed changes to subsections (B)(3), (B)(5), and (C)(3) and planned to delete subsections (B)(6), (C)(2), and (C)(4).

The Division did not implement these proposed changes.

**R20-6-1808. Geographic Areas**

The Division proposed to rewrite subsection (B).

The Division did not implement this proposed change.

**R20-6-1811. Quality Improvement**

The Division proposed to replace the reference in subsection (E)(7)(e) from BODEX to the Council on Dental Education and Licensure, American Dental Association.

The Division did not implement this proposed change.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Division has determined that the frequency of the current reporting requirements is not necessary to achieve the underlying regulatory objective. Accordingly, the Division is proposing changes to the reporting frequency of some reports from quarterly to annually to achieve the same regulatory objective. This will reduce compliance costs for Prepaid Dental Plan Organizations.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

No federal laws apply to the rules in this Article. .

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules in this Article require the issuance of a regulatory permit, license or agency authorization.

**14. Proposed course of action**

On March 29, 2021, the Division received an exemption from the rules moratorium from the Governor's office. It plans to open a docket and publish a Notice of Proposed Rulemaking in the Arizona Register in June or July, 2021. The Notice of Proposed Rulemaking will incorporate the proposed changes from the 2016 5-Year Review Report where appropriate, reduce the frequency of some of the existing reporting requirements, and change references to reflect the new structure of the Division.

\*This response applies to all the rules in the Article.

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance<sup>5</sup>

Article 20. Captive Insurers

May 31, 2021

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 20-143: Rule-making power

Specific Statutory Authority: A.R.S. § 20-167(F): Fees; Definition

A.R.S. § 20-1098.14: Rules

A.R.S. § 20-1098.01(J): Licensing; Authority

A.R.S. § 20-1098.08(C): Examinations

2. **The objective of each rule:**

Rule	Objective
<b>R20-6-2002</b>	<b>Fees; Examination Costs.</b> The objective of this rule is to notify applicants of the fees for issuance and renewal of a captive insurance certificate of authority and to clarify that the costs a captive insurer must pay for an examination conducted by the Division are in addition to licensing fees.

3. **Are the rules effective in achieving their objectives?** Yes X No \_\_\_

4. **Are the rules consistent with other rules and statutes?** Yes \_\_\_ No X

As a result of a statutory change subsequent to rulemaking in 2005, one statutory citation is incorrect (reference to A.R.S. § 20-1098: Definitions should be to A.R.S. § 20-1098.01: Licensing; Authority).

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

<sup>5</sup> On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions (the "Department"). The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance (the "Division").

8. **Economic, small business, and consumer impact comparison:**

Since the establishment of this Article in 2002, the Division has not identified any economic impact that is significantly different from that projected in the economic impact statement for this rulemaking.

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?**

No. In the 2016 5-Year Review Report, the Division proposed a correction to the first reference to A.R.S. § 20-1098: Definitions to A.R.S. § 20-1098.01: Licensing; Authority. It proposed a correction to the second reference to A.R.S. § 20-1098: Definitions to be a more specific reference to A.R.S. § 20-1098(22). Neither change has been made. However, at this time, the Division does not intend to pursue the second proposed correction because it is unnecessary.

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 rule's benefits outweigh its probable costs. The Division last amended this rule in 2005 and the fees provided for in this rule have not changed since that time. The Division has not received any indication from captive insurers that the compliance costs imposed by the rules outweigh the probable benefits of the rules.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

No federal laws apply to the rule in this Article. .

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 rule in this Article does not require the issuance of a regulatory permit, license or agency authorization.

**14. Proposed course of action**

The Division proposes to correct the statutory reference in the rule from A.R.S. § 20-1098 to A.R.S. § 20-1098.01 (see Item 10). It does not propose to change “Department” in this rule because A.R.S. § 20-101 establishes that the “Department” means the “Department of Insurance and Financial Institutions.” The Division plans to pursue this change by December, 2021.

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance<sup>6</sup>

Article 23. Threshold Rate Review – Individual Health Insurance

May 31, 2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143: Rule-making power

Specific Statutory Authority: A.R.S. § 20-238: Health Insurance; state regulation; rating areas; definitions

45 CFR 154.301(a)(5): CMS’s determination of Effective Rate Review Programs (“The State’s determination of whether a rate increase is unreasonable is made under a standard that is set forth in State statute or regulation.”)

2. The objective of each rule:

Rule	Objective
<b>R20-6-2301</b>	<b>Applicability; Definitions.</b> The purpose and objective of this rule is to establish applicability of Article 23 to rates charged by health insurers for individual health insurance and to define relevant terms.
<b>R20-6-2302</b>	<b>Disclosure of Preliminary Justification.</b> This rule establishes the requirement for the submittal of a preliminary justification when an insurer submits a threshold rate increase to the Division
<b>R20-6-2303</b>	<b>Timing for Submission of Preliminary Justification.</b> This rule establishes the timing by which an insurer must submit a preliminary justification to the Division depending on whether Section R20-6-607: Reasonableness of Benefits in Relation to Premium Charged applies. It also establishes the Division’s obligation to public access to portions of the preliminary justification and to provide a mechanism for public comment on proposed rate increases.
<b>R20-6-2304</b>	<b>Response to Unreasonableness Determination.</b> This rule gives a submitting insurer options when the Division finds that a threshold rate increase is unreasonable.
<b>R20-6-2305</b>	<b>Threshold Rate Increase Documentation Requirements.</b> This rule establishes the requirements for sufficient documentation the insurer must submit when it requests a threshold rate increase.

3. Are the rules effective in achieving their objectives?

Yes X\* No \_\_\_

<sup>6</sup> On July 1, 2020, the Arizona Department of Insurance merged into a new agency, the Arizona Department of Insurance and Financial Institutions (the “Department”). The Arizona Department of Insurance is now a division of the new agency called the Division of Insurance (the “Division”).

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 Division adopted Article 23: Threshold Rate Review – Individual Health Insurance in 2012. In its 2016 5-Year Review Report, the Division did not identify any economic impact that was significantly different from that projected in the economic impact for the original rulemaking. In the intervening period, the same has been true.

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?

**R20-6-2301. Applicability; Definitions**

In its 2016 5-Year Review Report, the Division proposed to update or add new definitions to reflect changes to the federal rules. Specifically, to add a new definition for “Plan” and to update definitions for “Product” and “Rate Increase.”

The Division did not implement this proposed change.

**R20-6-2302. Disclosure of Preliminary Justification**

The Division proposed to add language to subsection (A) to include plans within a product.

The Division did not implement the proposed change.

**R20-6-2305. Threshold Rate Increase Documentation Requirements**

The Division proposed to add language to subsection (B)(3) to:

- include actuarial values;
- add three more submission requirements to reflect the impacts of geographic factors and variations;
- include the impact of changes within a single risk pool to all products or plans within the risk pool; and
- include the impact of reinsurance and risk adjustment payments and changes.

The Division did not implement these proposed changes.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Arizona has established an effective rate review program which, under A.R.S. § 20-238 and 45 CFR 154.301, allows the State to retain its authority to regulate rates in the individual health insurance market. The rules are informational and impose the least burden and costs upon health insurers seeking rate increases.

**12. Are the rules more stringent than corresponding federal laws?      Yes       No**

The rules are not more stringent than federal laws. Under the federal scheme, if an insurer complies with Arizona’s Threshold Rate Review standards, CMS will defer to the State’s determination. The federal regulations governing Threshold Rate Review can be found at 45 CFR Subtitle A (Part 154; §§ 154.101 through 154.301).

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules in this Article require the issuance of a regulatory permit, license or agency authorization.

**14. Proposed course of action**

The Division proposes to make the suggested changes it identified in the 2016 5-Year Review Report and to change the definition of “Department” found at Section R20-6-2301(B)(1) to reflect the current name of “Department of Insurance and Financial Institutions – Division of Insurance.” The Division plans to pursue these changes by March, 2022.

\*This response applies to all the rules in the Article.

# Arizona Administrative CODE

20 A.A.C. 6 Supp. 19-4

www.azsos.gov

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

## Title 20



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

## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

### CHAPTER 6. DEPARTMENT OF INSURANCE

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="#">R20-6-310. Corporate Governance .....</a>	<a href="#">26</a>	<a href="#">R20-6-310.03. Contents of CGAD .....</a>	<a href="#">27</a>
<a href="#">R20-6-310.01. Definitions .....</a>	<a href="#">26</a>	<a href="#">R20-6-310.04. Severability Clause .....</a>	<a href="#">28</a>
<a href="#">R20-6-310.02. Filing Procedures .....</a>	<a href="#">27</a>		

#### Questions about these rules? Contact:

Department: Arizona Department of Insurance  
Name: Mary E. Kosinski  
Regulatory Legal Affairs Officer  
Address: 100 N. 15th Ave., Suite 102  
Phoenix, AZ 85007-2624  
Telephone: (602) 364-3100  
E-mail: [mkosinski@azinsurance.gov](mailto:mkosinski@azinsurance.gov)

#### The release of this Chapter in Supp. 19-4 replaces Supp. 19-3, 1-136 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.

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



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

**CHAPTER 6. DEPARTMENT OF INSURANCE**

Authority: A.R.S. § 20-101 et seq.

20 A.A.C. 6, consisting of R20-6-101 through R20-6-159, R20-6-201 through R20-6-218, R20-6-301 through R20-6-308, R20-6-401 through R20-6-409, R20-6-501, R20-6-601 through R20-6-607, R20-6-701 through R20-6-709, R20-6-801 through R20-6-802, R20-6-901, R20-6-1001 through R20-6-1016, R20-6-1101 through R20-6-1120, R20-6-1201 through R20-6-1205, R20-6-1401 through R20-6-1408, R20-6-1601 through R20-6-1607, and R20-6-1701 through R20-6-1704 recodified from 4 A.A.C. 14, consisting of R4-14-101 through R4-14-159, R4-14-14-301 through R4-14-308, R4-14-401 through R4-14-409, R4-14-501, R4-14-601 through R4-14-607, R4-14-701 through R4-14-709, R4-201 through R4-14-218, R4-14-801 through R4-14-802, R4-14-901, R4-14-1001 through R4-14-1016, R4-14-1101 through R4-14-1120, R4-14-1201 through R4-14-1205, R4-14-1401 through R4-14-1408, R4-14-1601 through R4-14-1607, and R4-14-1701 through R4-14-1704, pursuant to R1-1-102 (Supp. 95-1).

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Article 11, consisting of Sections R4-14-1101 through R4-14-1120 and Appendices A through E, adopted again by emergency effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Article 11, consisting of Sections R4-14-1101 through R4-14-1120 and Appendices A through E, adopted by emergency effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). R20-6-1101 through R20-6-1120 recodified from R4-14-1101 through R4-14-1120 (Supp. 95-1).

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## CHAPTER 6. DEPARTMENT OF INSURANCE

**ARTICLE 1. HEARING PROCEDURES AND RULEMAKING PETITIONS****R20-6-101. Scope of Article; Definitions**

- A.** Scope. This Article and Title 20 of the Arizona Revised Statutes govern contested cases before the Department. Except as otherwise provided in R20-6-160 for rulemaking petitions, this Article does not apply to rulemaking or investigative proceedings before the Department. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to contested cases.
- B.** Definitions. In this Article, the following definitions apply:
1. "Attorney General" means the Attorney General of Arizona, and the Attorney General's assistants or special agents.
  2. "Contested case" means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the Director after an opportunity for hearing.
  3. "Department" means the Arizona Department of Insurance.
  4. "Hearing Officer" means a person appointed by the Director to hear a contested case and make recommendations.
  5. "Party" has the meaning prescribed in A.R.S. § 41-1001(12).
  6. "Person" has the meaning prescribed in A.R.S. § 41-1001(13).
  7. "Director" means the Director of the Department or a hearing officer or any deputy, assistant or examiner of the Director acting in the Director's name in accordance with A.R.S. § 20-150.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-101 recodified from R4-14-101 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1).

**R20-6-102. Appearance and Practice before the Director**

- A.** Any person may appear in his own behalf or through counsel. An insurer may appear through legal counsel or through a duly authorized officer of the corporation.
- B.** When an attorney other than the Attorney General appears or intends to appear before the Director, he shall promptly advise the Director of his name, address and telephone number and the name and address of the person on whose behalf he intends to appear.
- C.** Conduct at any hearing which, in the discretion of the Director, is deemed contemptuous shall be grounds for exclusion from the hearing. Contemptuous conduct shall include willful noncompliance with an order of the Director or hearing officer, willful disruption or obstruction of any hearing, or any other willful conduct during any hearing which lessens the dignity or authority of the Director or hearing officer.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-102 recodified from R4-14-102 (Supp. 95-1).

**R20-6-103. Filing; Service**

- A.** No paper shall be deemed filed until received by the Director.
- B.** Unless otherwise provided by these rules, copies of all papers filed shall, at or before the time of filing, be served on the hearing officer, the Attorney General, and all parties to the proceeding.
- C.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney.

- D.** Service upon the attorney, or upon a party, shall be made personally in accordance with Rule 5(c) of the Arizona Rules of Civil Procedure, or by mail by enclosing a copy thereof in a sealed envelope and depositing same, postage prepaid, in the United States mail, addressed to the party to be served or his attorney at the address as shown by the records of the Director. Service by mail is complete upon deposit in the United States Mail.
- E.** All notices of hearing and final decisions issued by the Director shall be served by mail.
- F.** Proof of service shall be made by filing with the Director a written statement that service was made.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-103 recodified from R4-14-103 (Supp. 95-1).

**R20-6-104. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-104 recodified from R4-14-104 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-105. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-105 recodified from R4-14-105 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-106. Answer to Notice of Hearing**

- A.** In any notice of hearing, the Director may require that one or more parties shall file a written answer to the allegations contained in the notice of hearing. Even if not directed to do so, any party may file such an answer.
- B.** Except where a different period is provided by the notice of hearing, a party directed to file a written answer shall do so within 20 days after issuance of the notice of hearing. Where amendments to the assertions contained in the notice of hearing are made subsequent to service of the notice of hearing, one or more of the parties may be required to answer within a reasonable time the amended assertions.
- C.** Unless otherwise directed by the Director, an answer filed under this rule shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions contained in the notice of hearing. If the answering party is without or is unable to reasonably obtain knowledge or information sufficient to form a belief as to the truth of an assertion, he shall so state, which shall have the effect of a denial. Any assertion not denied shall be deemed to be admitted. When answering party intends in good faith to deny only a part of an assertion, he shall specify so much of it as is true and shall deny only the remainder.
- D.** If a party fails to file an answer required by the Director within the time provided, such person shall be deemed in default and the proceeding may be determined against him by the Director and one or more of the assertions contained in the notice of hearing may be deemed to be admitted.
- E.** Any defenses not raised in the answer shall be deemed to be waived.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-106 recodified from R4-14-106 (Supp. 95-1).

**R20-6-107. Expired**

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**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-107 recodified from R4-14-107 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-108. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-108 recodified from R4-14-108 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-109. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-109 recodified from R4-14-109 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-110. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-110 recodified from R4-14-110 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-111. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-111 recodified from R4-14-111 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**R20-6-112. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-112 recodified from R4-14-112 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**R20-6-113. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-113 recodified from R4-14-113 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-114. Request for Rehearing or Review**

- A. Within 30 days after service of the Director's order on the hearing, any aggrieved party may request a rehearing or review of the order. The request shall be in writing and shall be served upon the Director as provided by R20-6-103, and a copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the request.
- B. A request for rehearing or review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
  1. Irregularity in the hearing proceedings, or any order or abuse of discretion whereby the party seeking rehearing or review was deprived of a fair hearing;
  2. Misconduct by the Director, the hearing officer or any party to the hearing;
  3. Accident or surprise which could not have been prevented by ordinary prudence;

4. Newly discovered material evidence which could not have been discovered with reasonable diligence and produced at the hearing;
5. Excessive or insufficient sanctions or penalties imposed;
6. Error in the admission or rejection of evidence, or errors of law occurring at the hearing or during the course of the hearing;
7. Bias or prejudice of the Director or hearing officer;
8. That the order, decision, or findings of fact are not justified by the evidence or are contrary to law.

- C. A request for rehearing or review shall specify which of the grounds listed in subsection (B) it is based upon and shall set forth specific facts and laws in support of the request. A request may cite relevant portions of testimony from the hearing by referring to the pages or lines of the reporter's transcript of the hearing and may cite hearing exhibits by reference to the exhibit number.
- D. A request for rehearing shall specify the relief sought by the request, such as a different finding of fact, conclusion of law or order. A request for rehearing or review may seek multiple forms of relief in the alternative.
- E. When a request for rehearing is based upon affidavits, they shall be attached to and filed with the request unless leave for later filing of affidavits is granted by the Director or hearing officer. Leave may be granted ex parte.
- F. A request for rehearing or review of the Director's order on the hearing which is not timely made is deemed waived for the purpose of judicial review. A party who fails to request rehearing or review of the Director's order on the hearing shall be barred from raising a claim in any proceeding in which the Director, the hearing officer or the Department of Insurance is a party, except as otherwise required by law.
- G. A party may file a written request for a stay of the Director's decision. An order entered by the Director shall not be stayed by the filing of a stay request or a request for rehearing or review. The Director may stay an order pending the resolution of a request for rehearing or review or when justice requires.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-114 recodified from R4-14-114 (Supp. 95-1). Amended effective June 15, 1998 (Supp. 98-2).

**R20-6-115. Response to Request for Rehearing**

- A. Each party served with a request for rehearing pursuant to R20-6-114 shall be permitted to file a response within 15 days after the request for rehearing has been filed. This response shall be designated as a "response to request for rehearing or review" and shall be in writing. Affidavits may be attached to and filed with the response. If not filed in this manner, an affidavit shall be filed only if leave for later filing of affidavits is granted by the hearing officer or Director. Leave may be granted ex parte. The original response shall be filed with the Department as provided in R20-6-103, and one copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the response.
- B. The hearing officer or Director has the discretion to convene a hearing or hear oral argument to consider a request for rehearing.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-115 recodified from R4-14-115 (Supp. 95-1). Amended

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effective June 15, 1998 (Supp. 98-2).

**R20-6-116. Reserved**  
**through**

**R20-6-158. Reserved**

**R20-6-159. Repealed**

**Historical Note**

Adopted effective February 17, 1977 (Supp. 77-1). R20-6-159 recodified from R4-14-159 (Supp. 95-1). Repealed effective June 15, 1998 (Supp. 98-2).

**R20-6-160. Petition for Rulemaking Action**

- A.** The following definitions apply in this Section.
1. "Department" means the Arizona Department of Insurance.
  2. "Director" means the Director of the Department of Insurance.
  3. "Petitioner" means a person who petitions the Department for rulemaking action.
  4. "Rulemaking action" means the process for formulation and finalization of a new rule, or amendment or repeal of an existing rule.
- B.** Any person may petition the Department under A.R.S. § 41-1033 for rulemaking action.
- C.** A person who seeks rulemaking action shall file, with the Director, a petition with the following information:
1. The petitioner's name, address, and telephone number;
  2. The name and address of any organization the petitioner represents;
  3. A statement of the rulemaking action the petitioner seeks, including:
    - a. A citation to any existing rule, substantive policy statement, or Department practice to be amended or repealed; and
    - b. The specific language of a proposed new rule or rule amendment;
  4. The reasons for the rulemaking action, including an explanation of why an existing rule, substantive policy statement, or Department practice is inadequate, unreasonable, unduly burdensome, or unlawful; and
  5. The petitioner's dated signature.
- D.** The petitioner may submit additional supporting information, including:
1. Statistical data; and
  2. A list of other persons and entities likely to be affected by the proposed rulemaking action, with an explanation of the likely effects.
- E.** Within 60 days of the date the Department receives the petition, the Department shall send the petitioner a written decision indicating whether the Department is denying the petition or will initiate the requested rulemaking action, with the reasons for the decision.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Section heading corrected at Department Request, Office File No. M11-401, filed October 27, 2011 (Supp. 11-3).

**ARTICLE 2. TRANSACTION OF INSURANCE**

**R20-6-201. Advertisements of Health**

- A.** Definitions. The following definitions apply to this Section and to R20-6-201.01, R20-6-201.02, and R20-6-203:
1. "Advertisement" means materials and information used by an insurer to generate insurance business.

- a. Advertisement includes the following information:
    - i. Printed and published material, audio visual material, or other forms of electronic communication that an insurer uses or displays in direct mail, newspapers, magazines, radio, television, billboards, Internet web sites, and similar media to inform the public about the insurer or its products;
    - ii. Descriptive literature and sales aids an insurer issues or releases for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;
    - iii. Prepared sales talks and presentations and material for use by an insurer or prepared by an insurer for use by authorized producers; and
    - iv. Material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements;
  - b. "Advertisement" does not include the following:
    - i. Material used solely for training and educating an insurer's employees or producers;
    - ii. Material used in-house by insurers;
    - iii. Communications within an insurer's own organization not intended for dissemination to the public;
    - iv. Individual communications with current policy holders regarding a member's personal information other than material urging the policyholders to increase or expand coverages;
    - v. Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;
    - vi. Court-approved material ordered by a court to be disseminated to policyholders;
    - vii. Material in connection with promotion or sponsorship of a charitable event in which only the name of the insurer is displayed;
    - viii. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged. The announcement shall clearly indicate that it is preliminary to the issuance of a booklet and that does not describe the specific benefits under the contract or program nor the advantages as to the purchase of the contract or program;
    - ix. A general announcement by the sponsor that endorses the program;
    - x. Health and wellness material with general health and wellness information; or
    - xi. Press releases and news releases not intended to generate business.
2. "Disability insurance" has the same meaning prescribed in A.R.S. § 20-253.
  3. "Elimination period" means the time between the date a loss occurs and the date that benefits begin to accrue for that loss.
  4. "Exclusion" means a policy term stating a risk that an insurer has not assumed.
  5. "Health insurance" means:
    - a. Disability insurance;
    - b. Insurance provided by a service corporation regulated under A.R.S. § 20-821 et seq.;

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- c. Insurance provided by a prepaid dental plan organization regulated under A.R.S. § 20-1001 et seq.; and
  - d. Insurance provided by a health care services organization regulated under A.R.S. § 20-1051 et seq.
6. "Insurance administrator" or "administrator" has the meaning prescribed in A.R.S. § 20-485(A)(1).
  7. "Insurer" has the same meaning prescribed in A.R.S. § 20-104.
  8. "Limitation" means a policy term, other than an exclusion or reduction, that decreases the risk assumed by the insurer or the insurer's obligation to provide benefits.
  9. "Person" has the meaning in A.R.S. § 20-105.
  10. "Policy" means any plan, certificate, contract, agreement, statement of coverage, evidence of coverage, subscription contract, membership coverage, rider, or endorsement that provides disability benefits, health insurance, medical, surgical or hospital expense benefits, long-term care benefits, or Medicare supplement benefits in the form of a cash indemnity, reimbursement, or service.
  11. "Reduction" means a policy term that reduces the amount of an insured's benefits. A reduction means that the insurer has assumed the risk of a particular loss, but the amount or period of the insurer's coverage is less than what the insurer would have paid for the loss without the reduction.
  12. "Spokesperson" means a person making a testimonial about or an endorsement of an insurer's product who:
    - a. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or independent contractor;
    - b. Has been formed by the insurer, is owned or controlled by the insurer or its employees, or is a person who owns or controls an insurer;
    - c. Is in a policy-making position and affiliated with the insurer in any capacity described in subsections (a) or (b); or
    - d. Is directly or indirectly compensated for making the testimonial or endorsement.
- B. Scope.**
1. This Section applies to all advertisements for health insurance.
  2. This Section applies to the conduct of insurers, producers, and third-party administrators.
- C. General requirements.** Insurers, producers, and third-party administrators shall ensure that health insurance advertisements meet the requirements of this Section.
1. Advertisements shall be truthful and not misleading. The insurer shall not use words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology.
  2. An advertisement shall not omit information or use words, phrases, statements, references, or illustrations if the omission of information or use of words, phrases, statements, references, or illustrations may mislead or deceive purchasers or prospective purchasers.
  3. The words and phrases used to describe a policy shall accurately describe the benefits of the policy and not exaggerate any benefit through the use of phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will pay your hospital and surgical bills" or "this policy will replace your income," or similar words and phrases.
  4. If a policy covers only one disease or a list of specified diseases, any advertisement for the policy shall not imply coverage beyond the specified diseases.
  5. If a policy pays varying amounts for the same loss occurring under different conditions or pays benefits only when a loss occurs under certain conditions, any advertisement for the policy shall disclose the limited conditions.
  6. If an advertisement specifies payment of a particular dollar amount for hospital room and board expenses, the advertisement shall also include the maximum daily benefit and the maximum time limit for which those expenses are covered.
  7. An advertisement that refers to any dollar amount, period of time for which a benefit is payable, cost of policy, or specific policy benefit or the loss for which a benefit is payable shall also disclose any related exclusions, reductions, and limitations without which the advertisement would have the capacity and tendency to mislead or deceive.
  8. An advertisement covered by subsection (C)(7) shall disclose the existence of a waiting period if a policy contains a period between the effective date of the policy and the effective date of coverage under the policy. The advertisement shall disclose the existence of an elimination period.
  9. An advertisement shall disclose any exclusion, reduction, or limitation applicable to a pre-existing condition; however, an insurer is not required to make disclosure in an advertisement that does not reference specific product information, benefit level, or dollar amounts.
  10. If a policy has an exclusion, reduction, or limitation applicable to a preexisting condition, an advertisement shall not state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim and shall not use the phrase "no medical examination required" or other similar phrase.
  11. If an advertisement refers to renewability, cancellation, or termination of a policy, or states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, the advertisement shall disclose the provisions relating to renewability, cancellation, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner that does not minimize or obscure the qualifying conditions.
  12. An advertisement shall not make any offer prohibited under A.R.S. § 20-452(4).
  13. An advertisement shall not advertise any health insurance policy or form that has not been approved by the Department, unless the policy or form being advertised is exempt from approval or not subject to approval by order or statute.
  14. An advertisement shall not state or imply that a product being offered is an introductory, special, or initial offer that will entitle the applicant to receive advantages not described in the policy by accepting the offer.
  15. An advertisement designed to produce leads either by use of a coupon, a request to write or call the company, or subsequent advertisement before contact, shall disclose that a producer may contact the potential applicant.
- D. Method of disclosure of required information.** If an insurer is required by law to disclose particular information, the information shall be conspicuous and in close proximity to the statements to which the information relates, or under a prominent caption so that the required disclosure is not minimized, obscured, presented in an ambiguous fashion, or intermingled with the content of the advertisement.

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- E. Testimonials.**
1. Testimonials used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer shall provide the Department with the full name of the author and a copy of the full testimonial if the advertisement is filed with the Department or requested by the Department. If an insurer uses a testimonial, the insurer adopts the statements in the testimonial as the insurer's own statements. If a testimonial or endorsement is used more than one year after it is given, the insurer shall obtain a written confirmation from the author that the testimonial represents the current opinion of the author.
  2. The insurer shall disclose that a spokesperson has a financial interest or the proprietary or representative capacity of a spokesperson in an advertisement in the introductory portion of a testimonial or endorsement in the same form and with equal prominence as the endorsement. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, the insurer shall disclose that fact in the advertisement by language that states, "Paid Endorsement," or words of similar import in type, style, and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger. For television or radio advertising, the insurer shall place the required disclosure prominently in the introductory portion of the advertisement.
- F. Statistics.** An advertisement with information on the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use facts that are irrelevant to the sale of insurance and shall accurately reflect all of the relevant facts specific to the advertised policy or insurer. An advertisement shall not state or imply that statistics are derived from the policy being advertised unless that is true. The insurer shall identify in the advertisement the source of any statistics used.
- G. Inspection of policy.** An offer in an advertisement of free inspection of a policy or offer of a premium refund does not cure misleading or deceptive statements in the advertisement.
- H. Identification of plan or number of policies.**
1. If an advertisement offers a choice in the amount of benefits the advertisement shall disclose that the amount of benefits depends on the policy selected and that the premium will vary with the amount of the benefits.
  2. If an advertisement refers to benefits contained in more than one policy, other than a group master policy, the advertisement shall disclose that the benefits are provided only if multiple policies are purchased.
- I. Disparaging comparisons and statements.** An advertisement shall not make unfair, incomplete, or unsubstantiated comparisons of other insurers' policies or benefits or falsely disparage other insurers' policies, services, or business methods. A comparison is unsubstantiated if the insurer has no empirical study, analysis, or documentation supporting the comparative statement or comparison of policies or benefits.
- J. Jurisdictional limits.** If an insurer has an advertisement that is meant to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed, the advertisement shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of language such as "This Company is licensed only in State A" or "This Company is not licensed in State B."
- K. Identity of insurer.** The insurer shall state the name of the actual insurer in all of its advertisements. An advertisement shall clearly identify the insurer and shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device that may mislead or deceive the public as to the insurer's identity.
- L. Group insurance.** An advertisement shall not state or imply that prospective policyholders become group or quasi-group members and enjoy special rates or underwriting privileges, unless it is true. An advertisement to join an association, trust, or group that is also an invitation to contract for insurance coverage shall disclose that the applicant will be purchasing both membership in the association, trust, or group and insurance coverage.
- M. Government approval.** An advertisement shall not state or imply any of the following:
1. That a governmental agency or regulator is connected with or has provided or endorsed a policy or endorsed an insurer;
  2. That a governmental agency or regulator has examined an insurer's financial condition and found it satisfactory. This subsection does not apply if an insurer is responding to a specific documented, public, false allegation about its financial condition.
- N. Endorsements.** An advertisement may state that an individual, group, society, association, or other organization has approved or endorsed the insurer or its policy if the organization or group has done so in writing and if any proprietary relationship between the organization and the insurer is disclosed.
- O. Claims handling.** An advertisement shall not contain false statements about the time within which claims are paid or statements that imply that claim settlements will be liberal or generous beyond the terms of the policy.
- P. Statements about the insurer.** An advertisement shall not contain false or misleading statements about an insurer's assets, corporate structure, financial standing, length of time in business, or relative position in the insurance business.

**Historical Note**

Former General Rule Number 2. R20-6-201 recodified from R4-14-201 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-201.01. Insurer Advertising Responsibility and Records**

- A.** An insurer shall establish, and at all times maintain, a system of control over the content, form, and method of dissemination of all advertisements. The insurer whose policies are advertised is responsible for the advertisements, regardless of who writes, creates, designs, or presents the advertisement, except the insurer is not responsible for any advertisement placed by a person to whom the insurer gave no actual or apparent authority. Before using an advertisement about an insurer or its products, a producer shall get written approval from the insurer for use of advertisements that were not supplied by the insurer.
- B.** An insurer shall maintain, at its home or principal office, the following:
1. Advertisements disseminated by the insurer in Arizona or any other state, including:
    - a. Each printed, published, recorded, or prepared advertisement of individual policies; and
    - b. Typical printed, published, recorded, or prepared advertisements of blanket, franchise, and group policies.
  2. A notation attached to each advertisement specifying the manner and extent of distribution and the form number of any policy advertised; and

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3. Documentation supporting any testimonials, statistical claims, or comparisons shown in the advertising.
- C. An insurer shall maintain the advertisements, notations, and supporting documentation for at least three years from the date of first dissemination.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-201.02. Procedures for Filing Advertising Materials; Transmittal Form**

- A. An insurer that is required to file a health insurance advertisement with the Department as specified in A.R.S. §§ 20-826(T), 20-1018, 20-1057(X), 20-1110(E), or 20-1662 shall file the advertisement with a transmittal form prescribed by the Department.
- B. The transmittal form shall include the following information:
1. Identifying information of the insurer, including name, address, National Association of Insurance Commissioners' identification number, and type of insurer;
  2. A contact person at the insurer with whom the Department can communicate about the advertisement;
  3. Description of the type of advertisement being filed;
  4. Planned use and dissemination of the advertisement, including date of first use, or a statement that the advertisement will not be used any earlier than a specified date;
  5. Description of product being advertised;
  6. Form number and name for the advertised product;
  7. A certification from an officer of the insurer that the advertisement complies with applicable laws; and
  8. The dated signature of the insurer's officer.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-202. Advertising, Solicitation, and Transaction of Life Insurance**

- A. The definitions in R20-6-201(A) and the following definition apply in this Section:  
 "Life insurance" means a life insurance contract, including all benefits payable under the policy.
- B. Applicability
1. This Section applies to:
    - a. All persons subject to regulation under A.R.S. Title 20; and
    - b. Advertising, promotion, solicitation, negotiation, and sale of life insurance policies, regardless of the form of dissemination.
  2. This Section does not apply to group insurance, franchise insurance, or to annuities without life contingencies.
- C. General provisions. A life insurance advertisement shall not mislead the public by:
1. Omitting information that fairly describes the subject matter as a life insurance policy and the benefits available under the policy;
  2. Placing undue emphasis on facts that, even if true, are not relevant to the sale of life insurance; or
  3. Placing undue emphasis on features of incidental or secondary importance to the life insurance aspects of the policy.
- D. The Department deems the following acts misleading and deceptive:
1. Using any statement, including phrases such as "investment," "investment plan," "founders plan," "charter plan," "expansion plan," "profit," "profits," or "profit sharing," in a context or under circumstances or condi-

- tions that may mislead a purchaser or prospective purchaser to believe that the insurer is selling something other than a life insurance policy or will provide some benefit not included in the policy, or not available to other persons of the same class and equal expectation of life;
2. Using any phrase as the name or title of a life insurance policy if the phrase does not include the words "life insurance," unless other language in the same document expressly provides that the contract is a life insurance policy;
  3. Making any statement relating to the growth or earnings of the life insurance industry or to the tax status of life insurance companies in a context that would reasonably be understood as attempting to interest a prospective applicant in the purchase of shares of stock in the insurance company rather than in the purchase of a life insurance policy;
  4. Making any statement that reasonably tends to imply that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurance company by purchasing the policy, unless the statement is made with reference to policies of domestic life insurers engaged in a program allowed under A.R.S. § 20-453;
  5. Providing a policyholder with a premium receipt book, policy jacket, return envelope, or other printed or electronic material referring to the insurer's "investment department," "insured investment department," or similar terminology in a manner implying that the policy is sold, issued, or serviced by the insurer's investment department;
  6. Making any statement that reasonably tends to imply that, by purchasing a policy, the purchaser or prospective purchaser will become a member of a limited group of persons who may receive the payment of dividends, special advantages, benefits, or favored treatment unless the insurance contract specifically provides for the described payment of dividend, special advantages, benefits, or favored treatment;
  7. Stating or implying that only a limited number of persons or limited class of persons may buy a particular kind of policy, unless the limitation is related to recognized underwriting practices or specifically stated in the policy or rider;
  8. Describing premium payments in language that states the payment is a "deposit," unless:
    - a. The payment establishes a debtor-creditor relationship between the insurance company and the policyholder; or
    - b. The term is used with the word "premium" in a manner as to clearly indicate the true character of the payment;
  9. Providing any illustration or projection of future dividends that:
    - a. Is not based on the company's actual scale for payment of current dividends, and
    - b. Does not clearly indicate that the dividends are not guarantees;
  10. Using the words "dividends," "cash dividends," "surplus," or similar phrases in a manner that states or implies that the payment of dividends is guaranteed or certain to occur;
  11. Stating, without qualification, that a purchaser of a policy will share in a stated percentage or portion of the insurer's earnings;
  12. Making any statement that projected dividends under a participating policy will be or can be sufficient at any

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future time to assure the receipt of benefits such as a paid-up policy without further payment of premiums unless the statement also explains:

- a. The benefits or coverage that would be provided at the future time, and
  - b. The conditions under which the receipt of benefits without further payment of premiums would occur;
13. Describing a life insurance policy or premium payments in terms of “units of participation,” unless accompanied by other language clearly indicating that the references are to a life insurance policy or to premium payments, as applicable.
  14. Advising producers to avoid disclosing that life insurance is the subject of the solicitation or sale;
  15. Stating that an insured is guaranteed certain benefits if the policy is allowed to lapse, without explaining the non-forfeiture benefits;
  16. Using a dollar amount in printed material to be shown to a prospective policyholder, unless the amount is accompanied by language that:
    - a. States the nature of the dollar amount,
    - b. Prohibits including the use of dollar amounts not related to guaranteed values and properly projected dividend figures, and
    - c. Prohibits the use of figures showing growth of stock values, or other values not a part of the life insurance contract.
  17. Stating that a policy provides features not found in any other insurance policy, unless the insurer can demonstrate that other policies do not have the same feature;
  18. Making any statement or implication about an insurance policy that cannot be verified by reference to the policy contract, a sample of the policy being described, or the company’s officially published rate book and dividend illustrations;
  19. Stating that life insurance is “loss proof” or “depression proof,” except that an insurer may make statements that life insurance benefits, other than dividends, are guaranteed by the company regardless of economic conditions;
  20. Making any statement that a company makes a profit as a result of policy lapses or surrenders;
  21. Making comparisons to the past experience of other life insurance companies as a means of projecting possible experience for the company issuing the advertising; and
  22. Conduct or statements designed to mislead a prospective applicant or purchaser.

**Historical Note**

Former General Rule Number 68-14. R20-6-202 recodified from R4-14-202 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-203. Form Filings; Translations**

- A. An insurer, rate service organization, or rating organization shall provide to the Department, at the time of filing, an English language translation of each form, advertisement, or other document or material that the insurer is required by statute or rule to file with the Department, if the filed document or material contains communication in a language other than English.
- B. The translation filed under subsection (A) shall compare the foreign language version in a side-by-side format with the English language translation. An insurer, rate service organization, or rating organization shall ensure that the translation is performed by a person with formal college-level or specialized

training in the foreign language, including training in grammar and sentence syntax.

- C. With each translation, an insurer, rate service organization, or rating organization shall also provide to the Department a sworn statement signed by the translator who translated the document that includes the qualifications of the translator under subsection (B) and attests that the translation is identical in substance to the English document or material.
- D. If an insurer, rate service organization, or rating organization files a foreign language version of a document or material that the insurer has previously filed in English, the insurer is not required to refile the English version, but shall identify the English version, provide the side-by-side comparison under subsection (B), and file the sworn statement required under subsection (C).

**Historical Note**

Former General Rule Number 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-203 recodified from R4-14-203 (Supp. 95-1). New Section made by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-204. Expired****Historical Note**

Former General Rule Number 71-24; Former Section R4-14-204 repealed, new Section R4-14-204 adopted effective January 1, 1981 (Supp. 80-6). R20-6-204 recodified from R4-14-204 (Supp. 95-1). Amended effective July 14, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 475, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 136, effective December 15, 2016 (Supp. 16-4).

**R20-6-205. Local or Regional Retaliatory Tax Information****A. Definitions.**

1. “Addition to the rate of tax” means the tax rate determined under subsection (D) to be applied under A.R.S. 20-230(A) and this Section to foreign or alien insurers domiciled in a foreign country or other state that impose local or regional taxes.
2. “Alien insurer” has the meaning prescribed in A.R.S. § 20-201.
3. “Arizona life insurer” means a domestic insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.
4. “Department” means the Arizona Department of Insurance.
5. “Director” has the meaning prescribed in A.R.S. § 20-102.
6. “Domestic insurer” has the meaning prescribed in A.R.S. § 20-203.
7. “Foreign insurer” has the meaning prescribed in A.R.S. § 20-204.
8. “Foreign or alien life insurer” means a foreign or alien insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.

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9. "Local or regional taxes" means any tax, license, or other obligation imposed upon domestic insurers or their producers by any:
- City, county, or other political subdivision of a foreign country or other state; or
  - Combination of cities, counties, or other political subdivisions of a foreign country or other state.
10. "Other Arizona insurer" means a domestic insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
11. "Other foreign or alien insurer" means a foreign or alien insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
12. "Other state" means any state in the United States, the District of Columbia, and territories or possessions of the United States, excluding Arizona.
13. "Premium Tax and Fees Report," includes the "Survey of Arizona Domestic Insurers" and the "Retaliatory Taxes and Fees Worksheet," and means the form prescribed by the Director and filed annually by insurers under A.R.S. § 20-224.
- B.** Scope. This Section applies to all foreign, alien, and domestic insurers and to Premium Tax and Fees Reports filed by all insurers.
- C.** Data to be reported by domestic insurers. As a part of its Premium Tax and Fees Report, each domestic insurer shall file a Survey of Arizona Domestic Insurers that reports the following data for the calendar year covered by the insurer's Premium Tax and Fees Report with respect to each foreign country or other state in which the insurer was required to pay any local or regional taxes:
- Total local or regional taxes paid; and
  - Total premiums taxed under the premium taxing statute of the foreign country or other state, as reported by the insurer in any premium tax report filed under the laws of the foreign country or other state.
- D.** Computation of statewide and foreign countrywide additions to the rate of tax. For each foreign country or other state having one or more local or regional taxes on domestic insurers, the Department shall compute on a statewide or foreign countrywide basis an addition to the rate of tax. The Department shall compute the addition to the rate of tax payable by Arizona life insurers separately from the addition to the rate of tax payable by other Arizona insurers. The addition to the rate of tax payable by each category of Arizona domestic insurers shall be the quotient of:
- The aggregate local or regional taxes reported as paid to the foreign country or other state by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report divided by,
  - The aggregate statewide or foreign countrywide premiums taxed under the premium taxing statute of the other state or foreign country reported by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report.
- E.** Publication of additions to the rate of tax. The Department shall publish additions to the rate of tax determined under A.R.S. § 20-230(A) and this Section, based upon the survey information gathered from domestic insurers for the preceding calendar year under subsection (C). The Department shall publish the information annually on the Department web site, on or before November 1, and in the Retaliatory Taxes and Fees Worksheet for the next year's Premium Tax and Fees Report.
- F.** Foreign and Alien Insurers' Report of the Effect of Local or Regional Taxes. Each foreign or alien insurer domiciled in a foreign country or other state for which the Department publishes an addition to the rate of tax shall include in the "State or Country of Incorporation" column of its Retaliatory Taxes And Fees Worksheet for the calendar year covered by its Premium Tax and Fees Report an amount equal to:
- The total premiums received in Arizona that would be taxed under the laws of the domiciliary jurisdiction, as reported in the "State or Country of Incorporation" column of its premium tax and fees report multiplied by,
  - The applicable addition to the rate of tax published by the Department for the calendar year covered by the insurer's Premium Tax and Fees Report.
- G.** Contesting computation. A foreign or alien insurer subject to this Section may preserve the right to contest the computation of the addition to the rate of tax by submitting a notice of appeal under A.R.S. Title 41, Chapter 6, Article 10 before or at the time the retaliatory tax is paid. Subject to A.R.S. § 20-162, the filing of a notice of appeal to contest the computation of the applicable addition to the rate of tax does not relieve a foreign or alien insurer of the obligation to timely pay the retaliatory tax, and does not stay accrual of any applicable interest and penalties.

**Historical Note**

Former General Rule Number 71-25; Repealed effective March 19, 1976 (Supp. 76-2). R20-6-205 recodified from R4-14-205 (Supp. 95-1). Section R20-6-205 renumbered from R20-6-206 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-206. Expired****Historical Note**

Former General Rule Number 72-30. Repealed effective February 22, 1993 (Supp. 93-1). R20-6-206 recodified from R4-14-206 (Supp. 95-1). New Section adopted effective December 29, 1995 (Supp. 95-4). Amended effective November 5, 1998 (Supp. 98-4). Former R20-6-206 renumbered to R20-6-205; new R20-6-206 renumbered from R20-6-207 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**R20-6-207. Gender Discrimination**

- A.** The following definitions apply to this Section:
- "Applicant" means a person who is applying for a policy.
  - "Policy" means an insurance policy, plan, contract, certificate, evidence of coverage, subscription contract, or binder, including a rider or endorsement offered by an insurer.
  - "Insurer" means any company that issues a policy.
- B.** Applicability and scope. This Section applies to any policy or certificate delivered or issued for delivery in this state.
- C.** Availability requirements.
- An insurer shall not deny availability of any insurance policy on the basis of the gender or marital status of the insured or prospective insured.
  - An insurer shall not restrict, modify, exclude, reduce, or limit the amount of benefits payable, or any term, conditions or type of coverage on the basis of an applicant's or insured's gender or marital status, except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under A.R.S. Title 20.

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3. An insurer may consider marital status to determine whether a person is eligible for dependent coverage or benefits.
- D. Prohibited practices. The following practices and any other practice that treats similarly situated persons differently based on gender unless the different treatment is specifically allowed by law, is prohibited.
  1. Denying coverage to a person of one gender who is self-employed, employed part-time, or employed by relatives, if coverage is offered to a person of the opposite gender who is similarly employed;
  2. Denying a policy rider to a person of one gender if the rider is available to a person of the opposite gender;
  3. Denying maternity benefits to an applicant or insured who buys a policy for individual coverage if the insurer offers comparable family coverage policies with maternity benefits;
  4. Denying, under group policies, dependent coverage to an employee of one gender if dependent coverage is available to an employee of the opposite gender;
  5. Denying a disability income policy to an employed person of one gender if a policy is offered to a person of the opposite gender who is similarly employed;
  6. Treating complications of pregnancy differently from any other illness or sickness covered under a policy;
  7. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one gender;
  8. Offering lower maximum monthly benefits to a person of one gender than to a person of the opposite gender who is in the same classification under a disability income policy;
  9. Offering more restrictive benefit periods or more restrictive definitions of disability to a person of one gender than to a person of the opposite gender who is in the same classification under a disability income policy;
  10. Establishing different conditions for a policyholder of one gender to exercise benefit options contained in the policy than for a person of the opposite gender;
  11. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless the limitation is for the purpose of defining persons eligible for dependent's benefits; and
  12. Otherwise restricting, modifying, excluding or reducing the availability of any insurance contract, the amount of benefits payable, or any term, condition or type of coverage on account of gender or marital status in all lines of insurance.
- b. The coverage is not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with the particular organization or group;
- c. Coverage is paid for by bulk payment of premiums to the insurer; and
- d. An employer, union, or association sponsors the plan.
2. "Health insurance coverage" means a hospital and medical expense incurred policy, a nonprofit health care service plan contract, a health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise, but does not include the following:
  - a. Coverage only for accident, or disability income insurance, or any combination of accident and disability income insurance;
  - b. Coverage issued as a supplement to liability insurance;
  - c. Liability insurance, including general liability insurance and automobile liability insurance;
  - d. Workers' compensation or similar insurance;
  - e. Automobile medical payment insurance;
  - f. Credit-only insurance;
  - g. Coverage for onsite medical clinics; and
  - h. Other insurance coverage similar to the coverage specified in subsections (2)(a) through (g), of the Health Insurance Portability and Accountability Act of 1996 (Pub.L.No. 104-191) (HIPAA), under which benefits for medical care are secondary or incidental to other insurance benefits.
  - i. The following benefits, if the benefits are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the coverage:
    - i. Limited-scope dental or vision benefits;
    - ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of those benefits;
    - iii. Other similar, limited benefits specified in federal regulations issued under HIPAA.
  - j. The following benefits if provided under a separate policy, certificate, or contract of insurance with no coordination between provision of benefits and any exclusion of benefits under a group health plan maintained by the same plan sponsor and if the benefits are paid for an event regardless of whether the benefits are provided under a group health plan maintained by the same plan sponsor:
    - i. Coverage only for a specified disease or illness, or
    - ii. Hospital indemnity or other fixed indemnity insurance.
  - k. The following benefits if the benefits are offered as a separate policy, certificate, or contract of insurance:
    - i. Medicare supplemental policy as defined under § 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss;
    - ii. Coverage supplemental to the coverage provided under, 10 U.S.C. Title 10, Chapter 55; or
    - iii. Similar supplemental coverage provided to coverage under a group health plan.
3. "Health status-related factor" means any of the following:
  - a. Health status;

**Historical Note**

Former General Rule Number 73-32. R20-6-207 recodified from R4-14-207 (Supp. 95-1). Former R20-6-207 renumbered to R20-6-206; new R20-6-207 renumbered from R20-6-209 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-208. Group Coverage Discontinuance and Replacement**

- A. Definitions. The following definitions apply in this Section:
  1. "Group insurance" means an insurance benefit that meets all the following conditions:
    - a. Coverage is provided through insurance policies or subscriber contracts to classes of employees or members defined in terms of conditions pertaining to employment or membership;

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- b. Medical condition, including a physical or mental illness;
  - c. Claims experience;
  - d. Receipt of health care;
  - e. Medical history;
  - f. Genetic information;
  - g. Evidence of insurability, including conditions arising out of acts of domestic violence; or
  - h. Disability.
4. "Insurer" means an insurer that offers or provides group health insurance coverage, and includes an insurer that issues disability insurance as defined in A.R.S. § 20-253, a medical, dental, or optometric service corporation as defined in A.R.S. § 20-822, and a health care services organization as defined in A.R.S. § 20-1051.
- B.** This Section applies to all group insurance issued by an insurer.
- C.** Effective date of discontinuance for non-payment of premium.
1. If a group insurance policy provides for automatic discontinuance of the policy after a premium remains unpaid through the grace period allowed for payment, the insurer is liable for valid claims for covered losses incurred before the end of the grace period.
  2. If the insurer's actions after the end of the grace period indicate that the insurer considers the group insurance policy as continuing in force beyond the end of the grace period the insurer is liable for valid claims for losses beginning before the effective date of written notice of discontinuance to the policyholder or other entity responsible for paying premiums.
    - a. The following actions indicate that the insurer considers the policy in force:
      - i. Continued recognition, acknowledgement, or payment of subsequently incurred claims, or
      - ii. Continued enrollment of employees or dependents.
    - b. The following actions shall not indicate that the insurer considers that policy in force:
      - i. Recognition, payment, or acknowledgement of a claim by an insurer or processing a denial based on eligibility or other denial reasons set forth in the group benefit plan booklet; or
      - ii. Recognition, payment, or acknowledgement of claims due to the group's failure to notify the insurer that the employee or member is no longer eligible for coverage or the group policy is terminated.
  3. The effective date of discontinuance shall not be before midnight at the end of the third scheduled work day after the date on which the notice of discontinuance is delivered.
- D.** Requirements for notice of discontinuance.
1. An insurer's notice of discontinuance shall include a request to the group policyholder to notify covered employees of the date when the group policy or contract will discontinue and to advise that, unless otherwise provided in the policy or contract, the insurer is not liable for claims for losses incurred after the date of discontinuance. If the plan involves employee contributions, the notice of discontinuance shall also advise that if the policyholder continues to collect employee contributions beyond the date of discontinuance, the policyholder is solely liable for benefits for the period which contributions were collected.
  2. The insurer shall also provide the policyholder with a supply of notice forms that the policyholder can distribute to the covered employees. The notice forms shall explain the discontinuance and the effective date, and advise employees to refer to their certificates or contracts to determine their rights on discontinuance.
- E.** Extension of benefits.
1. A group policy shall provide a reasonable provision for extension of benefits for an employee or dependent who is totally disabled on the date of discontinuance as follows:
    - a. For a group life plan with a disability benefit extension of any type such as a premium waiver extension, extended death benefit in the event of total disability, or payment of income for a specified period during total disability, the discontinuance of the group policy shall not terminate the benefit extension.
    - b. For a group plan providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability or hospital confinement shall not effect benefits payable for that disability or hospital confinement.
    - c. A hospital or medical expense coverage, other than dental and maternity expense, shall include a reasonable extension of benefits or accrued liability provision. A provision is reasonable if:
      - i. It provides an extension of at least 12 months under "major medical" and "comprehensive medical" type coverage; or
      - ii. Under other types of hospital or medical expense coverage, it provides either an extension of at least 90 days or an accrued liability for expenses incurred during a period of disability or during a period of at least 90 days starting with a specific event that occurred while coverage was in force, such as an accident.
  2. An insurer shall ensure that the policy and group insurance certificates includes a description of the extension of benefits or accrued liability provision.
  3. An insurer shall ensure that benefits payable during a period of extension or accrued liability are subject to the policy's regular benefit limits, such as benefits ceasing at exhaustion of a benefit period or of maximum benefits.
  4. For hospital or medical expense coverage, an insurer may limit benefit payments to payments applicable to the disabling condition only.
- F.** Continuance of coverage in situations involving replacement of one plan by another.
1. When a group policyholder secures replacement coverage with a new insurer, self-insures, or foregoes provision of coverage, the replaced insurer is liable only to the extent of its accrued liabilities and extensions of benefits after the date of discontinuance.
  2. The succeeding insurer shall cover each individual who:
    - a. Was eligible for coverage under the prior plan on the date of discontinuance, and
    - b. Is eligible for coverage according to the succeeding insurer's plan of benefits with respect to a class of individuals eligible for coverage.
  3. For the purpose of successive health insurance coverage under subsection (F)(2), a succeeding insurer's plan of benefits shall:
    - a. Not have any non-confinement rules; and

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- b. Provide, as to any actively-at-work rules, that absence from work due to a health status-related factor is treated as being actively-at-work.
4. Nothing in subsection (F)(2) prohibits an insurer from performing coordination of benefits.
5. A succeeding insurer shall cover each individual not covered under the succeeding insurer's plan of benefits under subsection (F)(2) according to subsections (a) and (b) if the individual was validly covered, including benefit extension, under the prior plan on the date of discontinuance and is a member of a class of individuals eligible for coverage under the succeeding insurer's plan. Any reference in subsection (a) or (b) to an individual who was or was not totally disabled is a reference to the individual's status immediately before the effective date of coverage for the succeeding insurer.
- a. The minimum level of benefits to be provided by the succeeding insurer shall be the level of benefits of the prior insurer's plan reduced by any benefits payable by the prior plan.
- b. The succeeding insurer shall provide coverage until at least the earliest of the following dates:
- The date the individual becomes eligible under the succeeding insurer's plan as described in subsection (F)(2);
  - The date the individual's coverage would terminate according to the succeeding insurer's plan provisions applicable to individual termination of coverage such as at termination of employment or ceasing to be eligible dependent; or
  - For an individual who was totally disabled, and covered by a type of coverage for which subsection (E) requires an extension of accrued liability, the end of any period of extension of benefits or accrued liability that is required of the prior insurer under subsection (E), or if the prior insurer's policy is not subject to subsection (E), would have been required of the insurer had its policy been subject to subsection (E) at the time the prior plan was discontinued and replaced by the succeeding insurer's plan;
- c. For health insurance coverage, if an individual who was totally disabled at the time the prior insurer's plan was discontinued and replaced by the succeeding insurer's plan, and if subsection (E) requires an extension of benefits or accrued liability, the minimum level of benefits to be provided by the succeeding insurer shall be the level of benefits of the prior insurer's plan, reduced by any benefits paid by the prior plan.
- d. If the succeeding insurer's plan has a preexisting conditions limitation, the level of benefits applicable to preexisting conditions of persons becoming covered by the succeeding insurer's plan according to subsection (F) during the period the limitation applies under the new plan shall be the lesser of:
- The benefits of the new plan determined without application of the preexisting conditions limitation, or
  - The benefits of the prior plan.
- e. The succeeding insurer, in applying any deductibles, coinsurance amounts applicable to out-of-pocket maximums, or waiting periods, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. For deductibles or coinsurance amounts applicable to out-of-pocket maximums, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible or coinsurance provisions of the prior plan during the 90 days before the effective date of the succeeding insurer's plan but only to the extent these expenses are recognized under the terms of the succeeding insurer's plan and are subject to similar deductible or coinsurance provisions.
- f. If the succeeding insurer is required under this Section to make a determination about the benefits in the prior plan, the succeeding insurer may ask the prior plan to provide a statement of the benefits available or other pertinent information sufficient to permit the succeeding insurer to verify the benefit determination. For the purposes of this Section, all definitions, conditions, and covered-expense provisions of the prior plan shall govern the benefit determination. The benefit determination is made as if the succeeding insurer had not replaced coverage.

**Historical Note**

Former General Rule Number 73-34. R20-6-208 recodified from R4-14-208 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1). Section R20-6-208 renumbered from R20-6-210 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-209. Life Insurance Solicitation****A. Scope.**

- This Section applies to any solicitation, negotiation, or procurement of life insurance occurring in Arizona. This Section applies to any issuer of life insurance contracts, including fraternal benefit societies.
- Unless otherwise specifically included, the Section does not apply to:
  - Annuities,
  - Credit life insurance,
  - Group life insurance,
  - Life insurance policies issued in connection with a pension and welfare plan as defined by and subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq.; or
  - Variable life insurance under which the death benefits and cash values vary according to unit values of investments held in a separate account.

**B. In this Section, the following apply:**

- "Buyer's Guide" means a document that contains the language in the Appendix to this Section or language approved by the Director.
- "Cash dividend" means the current illustrated dividend that can be applied toward payment of the gross premium.
- "Equivalent Level Annual Dividend" is calculated as follows:
  - Accumulate the annual cash dividends at 5% interest compounded annually to the end of the 10th and 20th policy years;
  - Divide each accumulation in subsection (a) by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in subsection (a) over the periods stipulated in

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- subsection (a). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
- c. Divide the results in subsection (b) by the number of thousands of the Equivalent Level Death Benefit to arrive at the "Equivalent Level Annual Dividend."
4. "Equivalent Level Death Benefit" means the amount of benefit of a policy or term life insurance rider calculated as follows:
    - a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for 10 and 20 years at 5% interest compounded annually to the end of the 10th and 20th policy years, respectively.
    - b. Divide each accumulation in subsection (a) by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subsection (a) over the periods stipulated in subsection (a). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
  5. "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.
  6. "Life Insurance Surrender Cost Index" means the cost index that is calculated as follows:
    - a. Determine the guaranteed cash surrender value, if any, available at the end of the 10th and 20th policy years.
    - b. For policies participating in dividends, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at 5% interest compounded annually to the end of the period selected and add this sum to the amount determined in subsection (a).
    - c. Divide the result in subsection (b) (subsection (a) for guaranteed-cost policies) by an interest factor that converts into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subsection (b) or subsection (a) for guaranteed cost policies, over the periods stipulated in subsection (a)). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
    - d. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at 5% interest compounded annually to the end of the period stipulated in subsection (a) and dividing the result by the respective factors stated in subsection (c). This amount is the annual premium payable for a level premium plan.
    - e. Subtract the result of subsection (c) from subsection (d).
    - f. Divide the result of subsection (e) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Live Insurance Surrender Cost Index.
  7. The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Cost Index except that the cash surrender value and any terminal dividend are set at zero.
  8. "Policy Summary" means a written statement describing elements of the policy, including:
    - a. The following prominently placed title: Statement of Policy Cost and Benefit Information.
    - b. The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed to receive responses to inquiries regarding the Policy Summary.
- c. The full name and home office or administrative office address of the company by which the life insurance policy is to be or has been written.
  - d. The generic name of the basic policy and each rider.
  - e. For the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including the years for which Life Insurance Cost Indexes are displayed and at least one age from 60 through 65 or maturity, whichever is earlier, the following amounts, where applicable:
    - i. The annual premium for the basic policy;
    - ii. The annual premium for each optional rider;
    - iii. Guaranteed amount payable upon death at the beginning of the policy year regardless of the cause of death except for suicide, or other specifically enumerated exclusions provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;
    - iv. Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
    - v. Cash dividends payable at the end of the year with values shown separately for the basic policy and each rider. Dividends need not be displayed beyond the twentieth policy year; and
    - vi. Guaranteed endowment amounts payable under the policy that are not included under guaranteed cash surrender values in subsection (iv).
  - f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears. If the policy loan interest rate is variable, the Policy Summary shall include the maximum annual percentage rate.
  - g. Life Insurance Cost Indexes for 10 and 20 years but not beyond the premium-paying period. Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. The indexes need not be included for optional riders that are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months, and guaranteed insurability benefits, nor for basic policies or optional riders covering more than one life.
  - h. The Equivalent Level Annual Dividend in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which Life Insurance Cost Indexes are displayed.
  - i. If the Policy Summary includes dividends, a statement that dividends are based on the insurer's current dividend scale and are not guaranteed and a statement in close proximity to the Equivalent Level Annual Dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide."
  - j. A statement in close proximity to the Life Insurance Cost Indexes as follows: "An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."

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- k. The date on which the Policy Summary is prepared. The Policy Summary shall consist of a separate document. All information required to be disclosed shall not be minimized or obscure. Any amounts that remain level for two or more years of the policy may be represented by a single number that clearly indicates the amounts that are applicable for each policy year. Amounts in subsection (8)(e) shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.
- C. Disclosure requirements.
1. The insurer shall provide to all prospective purchasers, a Buyer's Guide and a Policy Summary before accepting the applicant's initial premium or premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least 10 days or unless the Policy Summary contains an unconditional refund offer, in which case the Buyer's Guide and Policy Summary shall be delivered with the policy or before delivery of the policy.
  2. The insurer shall provide a Buyer's Guide and a Policy Summary to any prospective purchaser upon request.
  3. If the Equivalent Level Death Benefit of a policy does not exceed \$5,000, the requirement for providing a Policy Summary is satisfied by delivery of a written statement containing the information described in subsections (D)(8)(b), (c), (d), (e)(i) through (e)(iii), (f), (g), (j), and (k).
- D. General rules.
1. Each insurer shall maintain at its home office or principal office for at least three years after its last authorized use a copy of each form the insurer authorized for use.
  2. A producer shall inform a prospective purchaser, before commencing a life insurance sales presentation, that the producer is acting as a life insurance producer and inform the prospective purchaser of the full name of the insurance company that the producer is representing. If an insurance producer is not involved in the sale, the insurer shall inform the prospective purchaser of the insurance company's full name.
  3. An insurer or producer shall not use terms such as financial planner, investment advisor, financial consultant, or financial counseling to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless that is true.
  4. If an insurer or producer refers to policy dividends, the reference shall include a statement that dividends are not guaranteed.
  5. An insurer shall not use a system or presentation that does not recognize the time value of money through the use of appropriate interest adjustments for comparing the cost of two or more life insurance policies unless the system or presentation is used to demonstrate the cash flow pattern of a policy and the presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.
  6. In a presentation of benefits, an insurer shall not display guaranteed and non-guaranteed benefits as a single sum unless they are shown separately and in close proximity.
  7. An insurer shall include with a statement regarding the use of the Life Insurance Cost Indexes an explanation that the indexes are useful only for the comparison of the relative costs of two or more similar policies.
  8. An insurer shall include with a Life Insurance Cost Index that reflects dividends or an Equivalent Level Annual Dividend a statement that it is based on the company's current dividend scale and is not guaranteed.
  9. If an insurer reserves the right to change the premium for a basic policy or rider, the annual premium shall be the maximum annual premium.
- E. An insurer's failure to provide or deliver a Buyer's Guide or a Policy Summary as provided in subsection (C) constitutes an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.
- Appendix. Life Insurance Buyers Guide**
- Life Insurance Buyer's Guide
- The face page of the Buyer's Guide shall read as follows:
- Life Insurance Buyer's Guide
- This guide can show you how to save money when you shop for life insurance. It helps you to:
- Decide how much life insurance you should buy,
  - Decide what kind of life insurance policy you need, and
  - Compare the cost of similar life insurance policies.
- Prepared by the National Association of Insurance Commissioners
- Reprinted by (Company Name)
- (Month and year of printing)
- The Buyer's Guide shall contain the following language at the bottom of page 2:
- The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.
- Buying Life Insurance**
- When you buy life insurance, you want a policy that fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes that are described in this guide. A good life insurance producer or company will be able and willing to help you with each of these shopping steps.
- If you are going to make a good choice when you buy life insurance, you need to understand what kinds are available. If one kind does not seem to fit your needs, ask about the other kinds that are described in this guide. If you feel that you need more information than is given here, you may want to check with a life insurance producer or company or books on life insurance in your public library.
- This guide does not endorse any company or policy.
- The remaining text of the buyer's guide shall begin on page 3 as follows:
- Choosing the Amount**
- One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. You should think of life insurance as a source of cash needed for

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expenses of final illnesses, paying taxes, mortgages or other debts. It can also provide income for your family's living expenses, educational costs and other future expenses. Your new policy should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need.

#### Choosing the Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance.

1. Term insurance
2. Whole life insurance
3. Endowment insurance

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the producer or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

#### Term Insurance

Term insurance is death protection of a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible." This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

#### Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits." This refers to benefits you do not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money that you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

#### Endowment Insurance

An endowment insurance policy pays a sum or income to you – the policyholder – if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

#### Finding a Low Cost Policy

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. **LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.**

#### What is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "non participating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

#### What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums
2. Cash values
3. Dividends

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply and divide many numbers yourself, you just compare the index numbers which you can get from life insurance producers and companies:

1. Life Insurance Surrender Cost Index. This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, you were to surrender the policy and take its cash value.
- Life Insurance Net Payment Cost Index. This Index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point

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in time, such as 10 or 20 years, if you continue paying premiums on your policy and do not take its cash value.

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a non participating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the non participating policy will not change.

#### How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

- (1) Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.
- (2) Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "Shopper's Guide" tells you that one company's policy is a good buy for a particular age and amount, you should not assume that all of that company's policies are equally good buys.
- (3) Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its producer. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.
- (4) In any event, you will need other information on which to base your purchase decision. Be sure you can afford the premiums, and that you understand its cash values, dividends and death benefits. You should also make a judgment on how well the life insurance company or producer will provide service in the future, to you as a policyholder.
- (5) These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for awhile, in favor of a new one. If such a replacement is suggested, you should ask for information from the company that issued the old policy before you take action.

#### Important Things To Remember – A Summary

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums must closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS. A good life insurance producer can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you make cost comparisons of similar policies.

Don't buy life insurance unless you intend to stick with it. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy

during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the producer or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities.

#### Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). R20-6-209 recodified from R4-14-209 (Supp. 95-1). Former R20-6-209 renumbered to R20-6-207; new R20-6-209 renumbered from R20-6-211 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-210. Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner

- A.** Definitions. The following definitions apply in this Section:
1. "Readable insurance policy" means a policy that can be read and reasonably understood by a person without special knowledge or training.
  2. "Policy" means a contract or agreement for insurance, or an insurance certificate regardless of the name used, and includes all clauses, endorsements, and papers attached or incorporated.
- B.** Scope. This Section applies to private passenger motor vehicle policies, homeowner policies, personal line dwelling policies, for four family units or less, and mobile homeowner policies delivered or issued for delivery in Arizona.
- C.** Compliance.
1. An insurer shall test the readability of its policy by use of the Flesch Readability Formula as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974).
  2. An insurer shall not use a policy unless the policy has a total readability score of 40 or more on the Flesch scale.
  3. An insurer shall include with each policy form filing required to be filed with the Director a checklist for the line of insurance setting forth the Flesch score.
- D.** Readability guidelines.
1. General organization of text.
    - a. A policy shall be divided into logically arranged sections for ease of locating content.
    - b. Each section shall be self-contained as to provisions relating solely to that section (for example, an exclusion section shall not be mixed with other parts of a policy).
    - c. General policy provisions applying to all or several like coverages shall be located in a common area.
    - d. The policy shall not contain non-essential provisions.
    - e. Defined words and terms shall be placed in a separate section at the beginning of the policy.
  2. Visual aids to readability. The insurer shall ensure that each policy meets the following format requirements:
    - a. Type size shall be at least eight point.
    - b. The font shall be block print rather than script, and legible.
    - c. Captions and headings shall be distinguishable from the general text.
    - d. White space separating coverages, policy sections, and columns shall be sufficient to make a distinct separation.
    - e. Defined words and terms shall be distinguishable from the general text.

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3. Language usage. The insurer shall ensure that each policy:
  - a. Is written in everyday, conversational language;
  - b. Uses short, simple sentences and words in common usage;
  - c. Uses an easy-to-read style, personal pronouns, and present tense active verbs.

**Historical Note**

Adopted effective May 28, 1979 (Supp. 79-1). R20-6-210 recodified from R4-14-210 (Supp. 95-1). Former R20-6-210 renumbered to R20-6-208; new R20-6-210 renumbered from R20-6-212 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness**

- A. Definitions.** The following definitions apply in this Section:
1. "Policy" means a contract or agreement for or effecting insurance, or a certificate of insurance, regardless of the name used, and includes all clauses, riders, endorsements, and attached papers.
  2. "Person" has the same meaning prescribed in A.R.S. § 20-105.
- B. Scope.** This Section applies to all policies delivered or issued for delivery in this state.
- C. Prohibition.** An insurer shall not engage in the following prohibited acts or practices that constitute unfair discrimination between individuals of the same class:
1. Refusal to insure or refusal to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual solely because of blindness or partial blindness; or
  2. Charging an individual a different rate for the same coverage solely because of blindness or partial blindness.
- D.** In this subsection, "refusal to insure" includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed if the insured loses eyesight. An insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness if the insured was blind or partially blind when the policy was issued.
- E.** For all other conditions, including the underlying cause of the blindness or partial blindness, a person who is blind or partially blind is subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as a sighted person.

**Historical Note**

Adopted effective August 1, 1977 (Supp. 77-4). Amended effective March 27, 1976 (Supp. 78-2). Correction, Historical Note for Supp. 77-4 should read adopted effective January 1, 1979 filed August 1, 1977. Historical Note for Supp. 78-2 should read Appendix amended effective January 1, 1979 filed March 27, 1978 (Supp. 79-5). Editorial correction, (D)(7)(a), title now shown in italics (Supp. 81-1). R20-6-211 recodified from R4-14-211 (Supp. 95-1). Former R20-6-211 renumbered to R20-6-209; new R20-6-211 renumbered from R20-6-213 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities**

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and

available at the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108:

1. For the purpose of meeting the requirements of A.R.S. § 20-1241.03(C): Life Insurance and Annuities Replacement Model Regulation, Appendix A – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-11 through 613-12, July 2000.
2. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(A): Life Insurance and Annuities Replacement Model Regulation, Appendix B – Notice Regarding Replacement: Replacing Your Life Insurance Policy or Annuity?, Volume III, pp. 613-13, July 2000.
3. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(B)(2): Life Insurance and Annuities Replacement Model Regulation, Appendix C – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-14 through 613-15, 1998.

**Historical Note**

Adopted effective March 27, 1978 (Supp. 78-2). Editorial correction see subsection (A) citation to A.R.S. (Supp. 78-4). Editorial correction see subsections (B) and (F) citation to A.R.S. (Supp. 78-6). R20-6-212 recodified from R4-14-212 (Supp. 95-1). Former R20-6-212 renumbered to R20-6-210; new R20-6-212 renumbered from R20-6-215 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-212.01. Forms for Buyer's Guide for Annuities**

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and available at the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108:

For the purpose of meeting the requirements of A.R.S. § 20-1242.02 regarding a Buyer's Guide: Annuity Disclosure Model Regulation, Appendix - Buyer's Guide to Fixed Deferred Annuities, Volume II, pp. 245-6 through 245-13, 1999, with attached Appendix I - Equity-Indexed Annuities, Volume II, pp. 245-14 through 245-20, 1999.

**Historical Note**

Section R20-6-212.01 renumbered from R20-6-215.01 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-213. Life and Disability Insurance Policy Language Simplification**

- A. Definitions.** The following definitions apply in this Section:
1. "Company" or "insurer" means any life or disability insurance company, benefit insurer, benefit stock insurer, prepaid dental plan organizations, health care service organizations, and all similar type organizations.
  2. "Director" means the Director of Insurance of Arizona.
  3. "Policy" or "policy form" means any policy, contract, plan or agreement of life or disability insurance, including credit life insurance and credit disability insurance, delivered or issued for delivery in the state by any company subject to this rule; and any certificate issued under a group insurance policy delivered or issued for delivery in this state.
- B. Applicability.**

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1. This Section and R20-6-212 apply to all life and disability insurance policies delivered or issued for delivery in this state by any company but do not apply to:
    - a. Any policy that is a security subject to federal jurisdiction;
    - b. Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy however, this shall not exempt any certificate issued under a group policy delivered or issued for delivery in this state; or
    - c. Any group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;
  2. Except as provided in R20-6-210, no other rule of this state setting language simplification standards shall apply to any policy forms.
- C. Minimum policy language simplification standards.**
1. Except as stated in subsection (B), an insurer shall not deliver or issue for delivery a policy form that has not been approved by the Director unless:
    - a. The text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);
    - b. It is printed, except for specification pages, schedules, and tables, in no less than 10 point type, one point leaded;
    - c. The style, arrangement and overall appearance of the policy do not give undue prominence to any portion of the text of the policy or to any endorsements or riders; and
    - d. The policy, if the policy has more than 3,000 words printed on three or fewer pages of text or if the policy has more than three pages regardless of the number of words, contains a table of contents or an index of the principal sections of the policy.
  2. An insurer shall measure a Flesch reading ease test score as follows:
    - a. For policy forms containing 10,000 words or less of text, an insurer shall analyze the entire form. For policy forms containing more than 10,000 words, an insurer may analyze the readability of two, 200-word samples per page instead of the entire form. The insurer shall separate the samples by at least 20 printed lines.
    - b. The insurer shall count the number of words and sentences in the text, then divide the total number of words by the total number of sentences, then multiply that figure by a factor of 1.015.
    - c. The insurer shall count and divide the total number of syllables by the total number of words, then multiply that figure by a factor of 84.6.
    - d. The sum of the figures computed under subsections (b) and (c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.
    - e. For subsections (b), (c), and (d), the insurer shall use the following procedures:
      - i. A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word;
      - ii. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and
      - iii. A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.
- f. The term "text" as used in this subsection shall include all printed matter except the following:
    - i. The name and address of the insurer, the name, number or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules or tables; and
    - ii. Policy language that is drafted to conform to the requirements of a federal law, regulation, or agency interpretation, policy language required by a collectively bargained agreement, medical terminology, words defined in the policy, and policy language required by law or regulation, if the insurer identifies the language or terminology excepted by this subsection and certifies, in writing, that the language or terminology is entitled to be excepted by this subsection.
  3. Any other reading test may be approved by the Director for use as an alternative to the Flesch reading test if it is comparable in result to the Flesch reading ease test.
  4. Filings subject to this subsection shall be accompanied by a certificate signed by an officer of the insurer stating that the filing meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved under subsection (G) of this Section. To confirm the accuracy of any certification, the Director may require the submission of further information to verify the certification in question.
  5. At the option of the insurer, riders, endorsements, applications and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.
- D.** The Director may authorize a lower score than the Flesch reading ease score required in subsection (C)(1)(a) if a lower score:
1. Provides a more accurate reflection of readability of a policy form;
  2. Is warranted by the nature of a particular policy form or type or class of policy forms; or
  3. Is caused by certain policy language drafted to conform to the requirements of any state statute, rule, or agency interpretation of law.

**Historical Note**

Adopted effective November 21, 1977 (Supp. 77-6).

Amended effective March 27, 1978 (Supp. 78-2).

Amended subsection (E), deleted subsection (F) and added new subsections (F) and (G) effective December 3, 1986 (Supp. 86-6). R20-6-213 recodified from R4-14-213 (Supp. 95-1). Former R20-6-213 renumbered to R20-6-211; new R20-6-213 renumbered from R20-6-216 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Corrected error in R20-6-213(D) that referenced subsection (E)(1)(a), which was relabeled as (C)(1)(a) in Supp. 07-2 (Supp. 08-1).

**R20-6-214. Coordination of Benefits****A. Applicability.**

1. This Section applies to all:
  - a. Group disability insurance policies;
  - b. Group subscriber contracts of hospital and medical service corporations and health care services organizations;
  - c. Group disability policies of benefit insurers; and

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- d. Group-type contracts that contain a coordination of benefits provision, are not available to the general public, and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization. Group-type contracts that meet this description are included regardless of whether denominated as "franchise," "blanket," or some other designation.
2. This Section does not apply to:
- Individual or family policies or individual or family subscriber contracts except as provided for in subsection (A)(1);
  - Group or group-type hospital indemnity benefits, written on a non-expense incurred basis, of \$30 per day or less unless characterized as reimbursement-type benefits and designed or administered to give the insured the right to elect indemnity-type benefits, instead of the reimbursement type benefits at the time of claim; or
  - School accident type coverages, written on a blanket, group, or franchise basis.
- B. Definitions.** In this Section, the following definitions apply:
- "Allowable expense" means any necessary, reasonable, and customary item of expense, at least a portion of which is covered under one or more of the plans covering the person for whom claim is made or service provided.
    - When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered is deemed to be both an allowable expense and a benefit paid.
    - A plan that takes Medicare or similar government benefits into consideration when determining the application of its coordination of benefits provision does not expand the definition of an allowable expense.
  - "Claim determination period" means an appropriate period of time such as "calendar year" or "benefit period" as defined in the policy.
  - "Plan," within the coordination of benefits provisions of a group policy or subscriber contract, means the types of coverage that the insurer may consider in determining whether overinsurance exists with respect to a specific claim.
  - "School accident-type coverage" means coverage of grammar school and high school students for accidents only, including athletic injuries, either on a 24-hour basis or "to-and-from school," for which the parent pays the entire premium.
- C. Order-of-benefit determination.**
- When a claim under a plan with a coordination of benefit provision involves another plan that also has a coordination of benefit provision, the insurer shall make the order-of-benefit determination as follows:
    - The plan that covers the person claiming benefits other than as a dependent shall determine benefits before those of the plan that covers the person as a dependent.
    - The plan of a parent whose birthday occurs earlier in a calendar year shall cover a dependent child before the benefits of a plan of a parent whose birthday occurs later in a calendar year. The word "birthday" as used in this subsection refers only to month and day in a calendar year, not the year in which the person was born.
  - If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in the following order:
    - First, the plan of the parent with custody of the child;
    - Then, the plan of the spouse of the parent with custody of the child; and
    - Finally, the plan of the parent not having custody of the child.
  - Notwithstanding subsection (c), if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first.
2. The benefits of a plan that covers a person as an employee (or as that employee's dependent) are determined before those of a plan that covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this provision and if, as a result, the plans do not agree on the order of benefits, this subsection does apply.
3. If none of the provisions of subsection (C) determines the order of benefits, the benefits of the plan that covered a claimant longer are determined before those of the plan that covered that person for the shorter time.
4. If one of the plans is issued out of this state and determines the order of benefits based upon the gender of a parent and, as a result, the plans do not agree on the order of benefits, the plan with the gender rule shall determine the order of benefits.
- D. Excess and other nonconforming provisions.** A plan with an order of benefit determination provision that complies with this Section, a complying plan, may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses an order-of-benefit determination provision that is inconsistent with this Section, a noncomplying plan, on the following basis:
- If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis.
  - If the complying plan is the secondary plan, it shall pay or provide its benefits first, as the secondary plan. The payment shall be the limit of the complying plan's liability, except as provided in subsection (4).
  - If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay benefits accordingly. The complying plan shall adjust any payments it makes based on the assumption whether information becomes available as the actual benefits of the noncomplying plan.
  - If the noncomplying plan pays benefits so that the claimant receives less in benefits than the claimant would have received had the noncomplying plan paid or provided its benefits as the primary plan, the complying plan shall advance to or on behalf of the claimant an amount equal to the difference. The complying plan shall not have a right to reimbursement from the claimant.

**Historical Note**

Adopted effective October 26, 1979 (Supp. 79-5). R20-6-214 recodified from R4-14-214 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1). Section R20-

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6-214 renumbered from R20-6-217 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-215. Renumbered****Historical Note**

Adopted effective September 7, 1981 (Supp. 81-3). Amended subsections (D) thru (H), deleted Agent's Statement and Exhibit D effective March 30, 1983 (Supp. 83-2). R20-6-215 recodified from R4-14-215 (Supp. 95-1). Amended by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215 renumbered to R20-6-212 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-215.01. Renumbered****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215.01 renumbered to R20-6-212.01 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-216. Renumbered****Historical Note**

Adopted effective as set forth in subsection (H) (Supp. 80-6). R20-6-216 recodified from R4-14-216 (Supp. 95-1). Former R20-6-216 renumbered to R20-6-213 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-217. Renumbered****Historical Note**

Adopted effective September 14, 1982 (Supp. 82-3). Amended subsections (C) and (D), deleted (F) effective January 1, 1987, filed December 16, 1986 (Supp. 86-6). R20-6-217 recodified from R4-14-217 (Supp. 95-1). Former R20-6-217 renumbered to R20-6-214 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

*Editor's Note: The following Section expired under A.R.S. § 41-1056(E) on September 30, 2001 at 8 A.A.R. 491. The Notice of Rule Expiration was not received until January 9, 2002. Therefore, the repeal of the rule noted in the Historical Note is moot (Supp. 02-1).*

**R20-6-218. Repealed****Historical Note**

Adopted effective November 9, 1984 (Supp. 84-6). R20-6-218 recodified from R4-14-218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5443, effective November 16, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1) (see Editor's Note above).

**ARTICLE 3. FINANCIAL PROVISIONS AND PROCEDURES****R20-6-301. Expired****Historical Note**

Former General Rule Number 3. R20-6-301 recodified from R4-14-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

**R20-6-302. Expired****Historical Note**

Former General Rule 62-11. R20-6-302 recodified from R4-14-302 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

**R20-6-303. Termination of Certificate of Authority and Release of Deposit**

- A. Domestic Insurers.** To request termination of a certificate of authority and, if applicable, release of statutory deposit, a domestic insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
  2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
  3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
  4. A plan of extinguishment for its outstanding liabilities that satisfies the requirements of subsection (C) or a sworn affidavit stating that the insurer has no outstanding liabilities to policyholders or claimants under subsection (C);
  5. A certified copy of the insurer's Board of Directors resolution or other documentation of the insurer's official action taken according to the insurer's statutorily required organizational documents approving the insurer's:
    - a. Withdrawal from the insurance business,
    - b. Dissolution of the insurer,
    - c. Merger with an insurer authorized in Arizona to transact the insurer's previously written and active lines of business of the insurer requesting termination, or
    - d. Transfer of domicile to another state or country.
  6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication, or other documentation that the insurer intends to file with the Arizona Corporation Commission after issuance of the Director's order as provided in subsection (D)(2);
  7. If requested by the director, a written agreement that guarantees payment of substantially all liabilities of the domestic insurer, other than obligations extinguished under subsection (C).
- B. Foreign and Alien Insurers.** To request termination of its certificate of authority and, if applicable, release of its deposit, a foreign or alien insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
  2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
  3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
  4. A plan of extinguishment for its Arizona liabilities that satisfies the requirements of subsection (C) or a sworn

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- affidavit stating that the insurer has no Arizona liabilities under subsection (C);
5. A copy of an order issued by the insurance director or other appropriate regulatory authority in the insurer's state or country of domicile that approves or authorizes either the insurer's:
    - a. Withdrawal from the insurance business,
    - b. Dissolution of the insurer,
    - c. Merger (approval of the merger from the states of domicile of the insurers), or
    - d. Transfer of domicile, if applicable.
  6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication or other required documentation that the insurer filed in its state of domicile; and
  7. If requested by the director, a written agreement that guarantees payment of substantially all Arizona liabilities of the insurer, other than obligations extinguished under subsection (C).
- C. Insurer's Plan for Extinguishment of Liabilities.**
1. To extinguish substantially all liabilities under subsection (A)(4) or subsection (B)(4) as applicable, an insurer may:
    - a. Reinsure the insurer's business in force with another insurer by entering into an agreement of bulk reinsurance that shall be effective when filed with and approved in writing by the director.
      - i. The agreement shall provide for assumption of all policyholder claims by the reinsurer including claims incurred but unreported as of the effective date of the agreement.
      - ii. The agreement may include recapture provisions exercisable by the insurer in the event the termination of its certificate of authority is not completed.
      - iii. Unless the director otherwise approves, the agreement shall provide that the reinsurer be licensed in Arizona for the particular lines of business reinsured.
    - b. Merge with another insurer that:
      - i. Assumes the liabilities of the non-surviving insurer; and
      - ii. Is authorized in Arizona for the previously written and active lines of business assumed, unless otherwise approved by the director.
    - c. Use its deposit, any additional security deposit or both to secure payment of former policyholder, policyholder, or claimant liabilities that are not reinsured or otherwise secured.
  2. For purposes of this Section, "substantially all liabilities" under Title 20 means all policyholder and claimant obligations reported by the insurer in the statement of financial condition, whether or not liquidated in amount, and shall include former policyholder claims and rights to refunds.
- D. Consideration of the Request for Termination of Certificate of Authority and Release of Deposit under subsections (A) and (B).**
1. If the director determines that the insurer has extinguished substantially all liabilities as required under this Section and has otherwise demonstrated compliance with this Section and A.R.S. Title 20, the director shall grant the request to terminate the certificate of authority and, if appropriate, release the insurer's deposit, provided:
    - a. The insurer has no fees, taxes, assessments or filings outstanding to the Department; and
    - b. The insurer is not subject of any pending investigation or examination under Title 20 by the Department.
  2. The director's order shall condition the release of a domestic insurer's deposit upon receipt by the director of evidence of the official filing with the Arizona Corporation Commission of the documentation described in subsection (A)(6).
  3. If the director determines that the insurer is unable to extinguish substantially all liabilities as required under this Section, or otherwise has not complied with this Section or with A.R.S. Title 20, the director shall notify the insured in writing that the request has been denied and the reasons for the denial.
- E. Exclusions. This Section does not apply to:**
1. An insurer's exchange and substitution of cash or eligible securities under A.R.S. § 20-586;
  2. An insurer's withdrawal of excess deposits, either cash or eligible securities, under A.R.S. §§ 20-587 and 20-588(A)(2); or
  3. Releases of deposits made under A.R.S. § 20-588(A)(3).
- Historical Note**
- Former General Rule 72-29. R20-6-303 recodified from R4-14-303 (Supp. 95-1). Section R20-6-303 repealed; new Section R20-6-303 made by final rulemaking at 14 A.A.R. 3432, effective October 4, 2008 (Supp 08-3).
- R20-6-304. Reserved**
- R20-6-305. Expired**
- Historical Note**
- Adopted effective September 13, 1978, except that it shall apply to the accounting treatment for unearned premium reserves and reinsurance premium receivables for credit life disability insurance on January 1, 1979, and all annual statements filed for periods on or after that date (Supp. 78-5). R20-6-305 recodified from R4-14-305 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).
- R20-6-306. Reserved**
- R20-6-307. Life and Disability Reinsurance Agreements**
- A. Scope.** This rule applies to all domestic life and disability insurers and reinsurers, and to all other licensed life and disability insurers and accredited reinsurers that are not subject to a substantially similar rule in their jurisdictions of domicile. This rule applies to the disability business of licensed property and casualty insurers. This rule does not apply to assumption reinsurance, yearly renewable term reinsurance, or nonproportional stop loss or catastrophe reinsurance, or similar forms of nonproportional reinsurance.
- B. Definitions**
1. "Agreement" means a reinsurance agreement and any amendment to a reinsurance agreement.
  2. "Credit Quality" means the risk that invested assets supporting the reinsured business will decrease in value but excludes decreases to changes in interest rate.
  3. "Department" means the Arizona Department of Insurance.
  4. "Director" means the Director of the Arizona Department of Insurance.
  5. "Disintermediation" means the risk that interest rates will rise and policy loans and surrenders will increase or maturing contracts will not renew at anticipated rates of renewal.

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6. "Lapse" means the risk that a policy will voluntarily terminate before the recoupment of a statutory surplus strain experienced at issuance of the policy.
7. "Reinvestment" means the risk that interest rates will fall and funds reinvested will therefore earn less than expected.

**C. Accounting Requirements**

1. Unless authorized by the director, an insurer shall not, for reinsurance ceded, reduce any liability, or establish any asset in any statutory financial statement filed with the Department if, by the terms of the agreement, or in effect, any of the following conditions exist:
  - a. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period are not sufficient to cover the ceding insurer's allocable renewal expenses anticipated at the time the business is reinsured on the portion of the business reinsured, unless a liability is established for the present value of the shortfall using assumptions equal to the applicable statutory reserve basis on the business reinsured.
  - b. The ceding insurer is required to reimburse the reinsurer for negative experience under the agreement. Neither the offset of the ceding insurer's experience refunds against current and prior years' losses, nor payment by the ceding insurer of an amount equal to the reinsurer's current and prior years' losses upon voluntary termination of in-force reinsurance by the ceding insurer, shall be considered a reimbursement to the reinsurer for negative experience.
  - c. The ceding insurer may be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of a specified event, including the insolvency of the ceding insurer. Termination of the agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due shall not be considered a deprivation of surplus or assets within the meaning of this subsection.
  - d. The ceding insurer is required, at scheduled times, to terminate the agreement or recapture automatically all or part of the reinsurance ceded.
  - e. The ceding insurer may be required to pay the reinsurer amounts other than from income reasonably expected from the reinsured policies.
  - f. Significant risks inherent in the business reinsured are not transferred to the reinsurer. Table A identifies the risks deemed significant for representative types of business.
  - g. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not transfer the underlying assets to the reinsurer, segregate the underlying assets in a trust or escrow account, or otherwise segregate the underlying assets. The assets that support the reserves for classes of business that do not have a significant credit quality, reinvestment, or disintermediation risk, or for long-term care or long-term disability insurance, traditional non-par permanent, traditional par permanent, adjustable premium permanent, indeterminate premium permanent, or universal life fixed premium with no dump-in

premiums allowed, may be held by the ceding company without segregation. To determine the reserves for classes of business, the supporting assets of which may be held without being segregated, the reserve interest rate adjustment formula shall reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reported in the ceding insurer's statutory financial statement.

- h. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.
  - i. The ceding insurer is required to make representations or warranties unrelated to the business reinsured.
  - j. The ceding insurer is required to make representations or warranties related to future performance of the business reinsured.
2. An agreement entered into after the effective date of this rule to reinsure business issued before the effective date of the agreement shall be filed by the ceding insurer with the Director within 30 days after execution of the agreement. Each filing shall be accompanied by a description of the corresponding reduction in liabilities or other credit for reinsurance, and any other financial impact of the agreement, reported in the ceding insurer's statutory financial statements. When an increase in surplus net of federal income tax results from an agreement falling under this subsection, the ceding insurer shall separately identify the increase as a surplus item in the aggregate write-ins for gains and losses in surplus in the Capital and Surplus account of the ceding insurer's statutory financial statement. As earnings emerge from the business reinsured, the ceding insurer shall report in its statutory financial statement recognition of surplus increase as income on a net of tax basis as reinsurance ceded.

**D. Written Agreements**

1. A ceding insurer shall not reduce any liability or establish any asset in any statutory financial statement filed with the Department, unless the ceding insurer and the reinsurer have executed an agreement or a binding letter of intent by the "as of" date of the statutory financial statement.
2. A ceding insurer shall not be allowed a credit for the reinsurance ceded based on a letter of intent unless the ceding insurer and the reinsurer execute an agreement within 90 days from the execution date of the letter of intent.
3. The agreement shall provide that:
  - a. The agreement constitutes the entire contract between the parties with respect to the business reinsured, and there are no understandings between the parties other than as expressed in the agreement; and
  - b. Any change or modification to the agreement shall be void unless made by written amendment signed by all parties.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-307 recodified from R4-14-307 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4).

**Table A. Risk Categories**

Risk Categories:

- (a). Morbidity                      (d). Credit Quality



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**Historical Note**

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

**R20-6-310.02. Filing Procedures**

- A.** Deadline to file. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by A.A.C. Title 20, Chapter 2, Article 16 shall, no later than June 1 of each calendar year, submit to the Director a CGAD that contains the information described in Section R20-6-310.03.
- B.** Attestation. The CGAD must include a signature of the insurer's or insurance group's CEO or corporate secretary attesting to the best of that person's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that the copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors or appropriate committee of the Board of Directors.
- C.** Format of the CGAD. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required and is permitted to customize the CGAD to provide the most relevant information necessary to permit the Director to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.
- D.** Insurer or insurance group to determine level of reporting.
  - 1. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance.
  - 2. The insurer or insurance group is encouraged to make the CGAD disclosures at:
    - a. The level at which the insurer's or insurance group's risk appetite is determined,
    - b. The level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or
    - c. The level at which legal liability for failure of general corporate governance duties would be placed.
  - 3. If the insurer or insurance group determines the level of reporting based on the criteria in subsection (D)(2), it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.
- E.** CGAD completed at the insurance group level. Notwithstanding subsection (A) and as outlined in A.R.S. § 20-492.01, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the NAIC's Financial Analysis Handbook 2018 Annual/2019 Quarterly, pp. 771 through 774, and no future editions. In these instances, a copy of the CGAD must also be provided, upon request, to the chief regulatory official of any state in which the insurance group has a domestic insurer.
- F.** Reference to other existing documents. An insurer or insurance group may comply with this Section by referencing other existing documents (e.g., ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in R20-6-310.03. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach

the referenced document if it is not already filed or available to the Director.

- G.** Subsequent filings of the CGAD. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made to the previously filed CGAD. The filing shall also state if no changes are made to the information or activities previously reported by the insurer or insurance group.

**Historical Note**

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

**R20-6-310.03. Contents of CGAD**

- A.** Inclusion of attachments. The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.
- B.** Board. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:
  - 1. The Board and its various committees ultimately responsible for overseeing the insurer or insurance group and the level or levels at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and
  - 2. The duties of the Board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of the Chief Executive Officer (CEO) and Chairman of the Board within the organization.
- C.** Senior Governing Entity. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and its significant committees, including a discussion of the following factors:
  - 1. How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.
  - 2. How an appropriate amount of independence is maintained on the Board and its significant committees.
  - 3. The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.
  - 4. How the insurer or insurance group identifies, nominates and elects members of the Board and its committees. The discussion should include, for example:
    - a. Whether a nomination committee is in place to identify and select individuals for consideration.
    - b. Whether term limits are placed on directors.
    - c. How the election and re-election processes function.
    - d. Whether a Board diversity policy is in place and if so, how it functions.
  - 5. The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).
- D.** Senior Management. The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

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1. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:
    - a. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.
    - b. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
  2. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
    - a. Compliance with laws, rules, and regulations; and
    - b. Proactive reporting of any illegal or unethical behavior.
  3. The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Director to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk-taking. Elements to be discussed may include, for example:
    - a. The Board's role in overseeing management compensation programs and practices.
    - b. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
    - c. How compensation programs are related to both company and individual performance over time;
    - d. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
    - e. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;
    - f. Any other factors relevant to understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.
  4. The insurer's or insurance group's plans for CEO and Senior Management succession.
- E. Oversight.** The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
1. How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
  2. How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps the Senior Management is taking to monitor and manage those risks;
  3. How reporting responsibilities are organized for each critical risk area. The description should allow the Director to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, for example, the following critical risk areas of the insurer:
    - a. Risk management processes (an ORSA Summary Report filer may refer to its ORSA Summary Report submitted pursuant to A.R.S. § 20-491.03);
    - b. Actuarial function;
    - c. Investment decision-making processes;
    - d. Reinsurance decision-making processes;
    - e. Business strategy/finance decision-making processes;
    - f. Compliance function;
    - g. Financial reporting/internal auditing; and
    - h. Market conduct decision-making processes.

**Historical Note**

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

**R20-6-310.04. Severability Clause**

If any provision of this Section, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to that end the provisions of this Section are severable.

**Historical Note**

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

**Appendix A. Expired****Table 1. Expired****Table 2. Expired****Table 3. Expired****Table 4. Expired****Table 5. Expired****Table 6. Expired****Historical Note**

Appendix A adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Appendix A (including Tables 1 through 6) expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**ARTICLE 4. TYPES OF INSURANCE COMPANIES****R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers**

**A.** The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with and available from the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197, modified as follows:

Section 1 A is modified to read: "No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or

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employee of that insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation."

- B.** Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).

**Historical Note**

Former General Rule 57-3. R20-6-401 recodified from R4-14-401 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3). New Section made by final rulemaking at 9 A.A.R. 1086, effective March 6, 2003 (Supp. 03-1). Section amended by final expedited rulemaking with an immediate effective date of September 16, 2019 (Supp. 19-3).

**R20-6-402. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Exhibit A. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Exhibit B. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-403. Expired****Historical Note**

Former General Rule 69-21. R20-6-403 recodified from R4-14-403 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix A. Expired****Historical Note**

R20-6-403, Appendix A recodified from R4-14-403, Appendix A (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix B. Expired****Historical Note**

R20-6-403, Appendix B recodified from R4-14-403, Appendix B (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix C. Expired****Historical Note**

R20-6-403, Appendix C recodified from R4-14-403, Appendix C (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary

of State August 24, 2000 (Supp. 00-3).

**R20-6-404. Repealed****Historical Note**

Former General Rule 73-31; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-404 recodified from R4-14-404 (Supp. 95-1).

**R20-6-405. Health Care Services Organization**

- A.** Authority. This rule is adopted pursuant to A.R.S. §§ 20-142, 20-143, 20-106 and 20-1051 through 20-1068.
- B.** Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 128, Laws of 1973, to regulate and control Health Care Services Organizations in the State of Arizona, (including, but not limited to Certificate of Authority, licensing, fees for licensing, disciplinary procedures for agents and control of solicitation of members and evidences of coverage).
- C.** Scope
1. The scope of this Rule is the scope of A.R.S. Title 20 as it relates to Insurers or Hospital or Medical Service Corporations. As it relates to Health Care Services Organizations, the scope of this rule is the scope of Title 20, Chapter 1 and Title 20, Chapter 4, Article 9, as provided in A.R.S. § 20-1068. This rule is applicable to agents of persons, and persons operating or proposing to operate Health Care Services Organizations in the State of Arizona.
  2. The statutory authority for this rule, A.R.S. Title 20, Chapter 4, Article 9, does not provide for exemptions therefrom for persons or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.
- D.** Repeal. This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.
- E.** Definitions. As used in this rule, unless the context otherwise requires:
1. "Agent" has the meaning of A.R.S. § 20-282.
  2. "Basic Health Care Services" has the meaning of A.R.S. § 20-1051.
  3. "Certificate of Authority" means a Certificate authorizing operation of a Health Care Services Organization.
  4. "Director" means the Director of Insurance of the State of Arizona.
  5. "Enrollee" has the meaning of A.R.S. § 20-1051.
  6. "Evidence of coverage" has the meaning of A.R.S. § 20-1051.
  7. "Health Care Plan" has the meaning of A.R.S. § 20-1051.
  8. "Health Care Services" has the meaning of A.R.S. § 20-1051.
  9. "Health Care Services Organizations" has the meaning of A.R.S. § 20-1051.
  10. "Hospital Service Corporation" has the meaning of A.R.S. § 20-822.
  11. "Insurer" has the meaning of A.R.S. § 20-106(C).
  12. "License" means the authority to act as an agent of a Health Care Services Organization.
  13. "Medical Service Corporation" has the meaning of A.R.S. § 20-822.
  14. "Net charges" means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.
  15. "Person" has the meaning of A.R.S. § 20-1051.

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16. "Physician and patient relationship" has the meaning of A.R.S. § 20-833.
  17. "Prepaid Health Plans" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.
  18. "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.
  19. "Provider" has the meaning of A.R.S. § 20-1051.
  20. "Transact" has the meaning of A.R.S. § 20-106(A) and (B).
  21. "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.
- F. Certificate of Authority**
1. Policy. Persons and agents of persons operating Health Care Services Organizations as of May 7, 1973, shall comply with the application requirements of A.R.S. § 20-1052 on or before August 7, 1973.
  2. A Certificate of Authority shall not be granted until the Director is satisfied that the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  3. An examination of an applicant at the expense of the applicant for a Certificate of Authority may be ordered to be made if the applicant is not a resident, is controlled by a non-resident, or maintains a head or principal office out of its service area, and will be ordered to be made if the applicant contracts with providers, or for services outside a reasonable area, or has contract obligations under its evidence of coverage that are, or appear to be, inequitable or unreasonable as to the enrollees.
- G. Certificate of Authority – Application**
1. A person required to be qualified to do business in this State as a Health Care Services Organization, pursuant to A.R.S. § 20-1052 shall file an application for Certificate of Authority on Department Form E-104.
  2. Applications failing to comply with the requirements of A.R.S. § 20-1053 will be denied without prejudice to the filing of an application complying with such requirements.
  3. Health Care Services Organizations operating in this State as of May 7, 1973, and having submitted a sufficient application for Certificate of Authority as required by this rule, including the disclosure filings of paragraph (7) of this subsection, may continue to operate as an organization until the Director acts upon the application.
  4. The application for Certificate of Authority shall be verified by an authorized and qualified officer of the Health Care Services Organization.
  5. The application for Certificate of Authority shall be accompanied by the fees required for a hospital or medical service corporation by A.R.S. § 20-167 and a tax return or returns on Department Form E-162, for the calendar year previous to the calendar year of application during which the applicant has done business in this State as a Health Care Services Organization, and the amount of tax due thereon after the effective date hereof, if any, as provided by A.R.S. § 20-1060. The filing of such returns or payment of such tax may be adjusted or waived by the Director upon application and affirmative showing in writing therefor justifying the adjustment or waiver.
  6. The Director may, upon written request accompanied by supporting documentation justifying the request, authorize the substitution of public information filed by an applicant under similar statutes or regulations in another state, or under federal requirements, or may waive such information or additional information.
7. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions or principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.
  8. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.
- H. Certificate of Authority – Application. The application for Certificate of Authority shall be accompanied by a power of attorney as required by A.R.S. § 20-1053(A)(10) on Department Form E-128.**
- I. Certificate of Authority – Grounds for denial**
1. Policy. A Certificate of Authority to operate a Health Care Services Organization shall not be granted until the Director is satisfied by the affirmative showing, verified by the applicant, that all of the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  2. Guidelines. The guidelines and standards for determination of appropriate mechanisms to achieve an effective Health Care Plan include, but are not limited to the following:
    - a. Ability to provide basic Health Care Services without undue restrictions, limitations, discrimination, unreasonable fee schedules, or unreasonable administrative costs; an affirmative showing that the form of organization does not evidence any coercion, duress or other compulsion over members;
    - b. The form of organization does not lend itself to practices prohibited by A.R.S. §§ 20-441 through 20-459, and
    - c. The evidence of coverage does not contain provisions or statements which are unjust, inequitable, misleading, deceptive or untrue or encourage misrepresentation.
  3. Failure to pay obligations. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected if the applicant has failed after 30 days from the entry of final judgment, to pay obligations within the provisions of an evidence of coverage issued by such applicant. The provisions of this Section may be waived by the Director upon a clear affirmative showing that the applicant is defending an action or appealing a judgment at law or equity in a court of this state, or is required to obtain a Certificate of Authority so as to maintain such action.
  4. Unauthorized agents. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected, after stated cause and opportunity to answer, if the applicant has, 90 days after the effective date, permitted transactions by an unauthorized agent.
- J. Solicitation requirements**
1. Forms for evidences of coverage, advertising matter, sales material and amendments thereto, will not be approved until the Director is satisfied by filing of Department Form P-107 accompanying the filing of such form and the payment of necessary fees, that the require-

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ments of A.R.S. §§ 20-1057, 20-1054(2), and 20-1061 have been met and will continue to be met.

2. Each Health Care Services Organization shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement brochure, form letter of solicitation, evidence of coverage, certificate, agreement or contract, and a copy of all radio and television forms of the above hereafter disseminated in this or any other State with a notation attached to each such solicitation or inducement to indicate the manner and extent of distribution and the date of approval by the Department of such solicitation. Such advertising file shall be maintained for a period of not less than three years.
- K.** Annual report. Each Health Care Services Organization required to file an annual statement, shall, on or before March 1 of each year, file with the Director, together with its annual statement on Department Form E-13, a certificate executed by an authorized officer of the Health Care Services Organization stating that to the best of his knowledge, information and belief, all written solicitations disseminated during the preceding statement year complied or were made to comply with the provisions of Title 20, Chapter 4, Article 9, and this rule, and that no forms of solicitation were disseminated without the prior approval of the Director.
- L.** Taxes
1. All Health Care Services Organizations operating and transacting business in the State of Arizona shall on or before March 1 and with the filing of the Annual Report, file a tax return on Department Form E-162, and pay the tax due on such return pursuant to A.R.S. § 20-1060.
  2. A tax return required to be filed and filed with an application for Certificate of Authority may cover a period of time of less than a calendar year as specified in the return and approved by the Director. Annual tax returns required to be filed coincident with the annual report shall be for the full calendar year next preceding the date of filing the annual report.
  3. Net charges, as in this rule defined, shall represent the net charges received during the calendar year next preceding the date of filing the annual report and tax return.
- M.** Deposit requirements
1. In the event a Health Care Services Organization determines to maintain statutory deposits by a surety bond, such surety bond shall be in form as approved by the Director guaranteeing the payment of Health Care Services furnished to enrollees, and shall be deposited with the State Treasurer.
  2. In the event a Health Care Services Organization determines to maintain the deposit requirements by filing securities with the State Treasurer, a full and complete statement of the securities proposed to be deposited, together with sufficient information to permit a determination of eligibility of such securities shall be filed with the Director on Department Form E-123, and such securities shall not be deposited until such securities are approved by the Director in writing.
  3. No securities deposited as herein provided shall be exchanged or substituted for similar securities, except upon the prior written approval of the Director.
  4. Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(f) shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.
- N.** Reserve requirements. Reserves required by A.R.S. § 20-1056 shall be deposited or maintained as cash, as Certificates of Deposit, or as securities eligible for investment of the capital of domestic insurers, pursuant to A.R.S. §§ 20-537 and 20-538.
- O.** Insurers and hospital and medical service corporations – Certificate of Authority
1. Insurers, Hospital Service Corporation, Medical Service Corporations, and Hospital and Medical Service Corporations, holding current Certificates of Authority to do business in this state may organize and operate Health Care Services Organizations jointly or severally without compliance with the deposit and reserve requirements of the statute, if the application contains an affirmative showing that the applicant organization has complied with comparable provisions of Title 20, and is an appropriate mechanism to achieve an effective Health Care Plan.
  2. The provisions of statute and this rule applying to Certificates of Authority and Application therefor, shall apply to all insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations doing business in this state.
  3. Organizations claiming exemption or partial exemption pursuant to A.R.S. § 20-1063(c) shall file with the Director simultaneously with the application for Certificate of Authority, a statement affirmatively showing that the applicant has complied with provisions of Title 20 A.R.S. comparable to or more restrictive than the provisions of Title 20, Chapter 4, Article 9, and shall have received the written approval of the Director for such exemption or partial exemption.
- P.** Application, examination and licensing of agents
1. No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization, unless, prior to making any solicitation or transaction, he has been appointed agent by a Health Care Services Organization holding a current valid Certificate of Authority and has been licensed as herein provided. Persons directly or indirectly representing or acting for a Health Care Services Organization and not licensed as herein provided, or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.
  2. Any person applying for a license as an agent of a Health Care Services Organization shall do so by filing with the Department of Insurance the following:
    - a. An application for such license on a form approved by the Director of the Department of Insurance;
    - b. The required fees for such license;
    - c. Such additional information as the Director may deem necessary.
  3. The licensing of an agent of a Health Care Services Organization shall not become effective until such applicant shall have satisfactorily passed a written examination in accordance with A.R.S. § 20-292 as supplemented by A.R.S. § 20-167.
  4. The examination shall be given in such places and at such times as the Director shall from time to time designate.

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5. The form of examination and the manual may be altered and amended from time to time, so as to represent a fair test of the applicant's qualifications.
  6. Every applicant for license shall satisfactorily complete the examination given with a grade of at least 70%, or such other percentage as may be fixed from time to time by the Director prior to the examination commensurate with the nature of the examination given.
  7. License and examination fees shall be in accordance with A.R.S. § 20-167.
  8. Report of the results of any examination given pursuant to this rule shall be mailed to the applicant and to the applicant's Health Care Services Organization at the address shown on the application.
  9. Except as modified by this rule, the provisions for examination, licensing, annual fees and disciplinary procedures of Chapter 2, Article 3 of Title 20, shall apply.
  10. Any agent licensed in this state shall immediately report to the Director any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or other violation affecting his license and all complaints or charges of misconduct lodged with his employer, any public agency of the state, or another state.
  11. The Director may reject any application or suspend or revoke, or refuse to renew any agent's license for inducements or statements which are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation, or are untrue or misleading.
  12. The rules, standards and guidelines governing any proceeding relating to the suspension or revocation of the license of a life insurance agent, where applicable, shall also govern any proceedings for suspension or revocation of the license of an agent of a Health Care Services Organization.
  13. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
  14. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
- Q. Forms**
1. The forms prescribed by this rule and the instructions applicable thereto are adopted as requirements of the Director and necessary for the protection of citizens of this state. Such forms, instructions, manuals or examinations are those currently in use, but the same may be amended without reference to this rule and when approved as amended are incorporated in this rule by reference. The form of manual or examination of agents, or any form adopted by the Director may be reproduced for the purpose of reporting or for other purposes.
  2. For good cause shown, the Director may authorize the filing of forms and reports on dates other than required by this rule, if applied for in writing not less than 10 days prior to the due date of such report and statement, exhibit, return or accounting.
- R. Severability.** In any provision of this rule or the forms, statements, returns or reports made part of this rule, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions of applications of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.
- S. Effective date.** This rule became effective on the 7th day of May, 1973. Amendments to this rule shall become effective upon filing with the Secretary of State.
- Historical Note**
- Former General Rule 73-33; Amended subsections (E), (P), (R), (S), and (T) effective August 12, 1981 (Supp. 81-4). R20-6-405 recodified from R4-14-405 (Supp. 95-1).
- R20-6-406. Expired**
- Historical Note**
- Adopted effective May 18, 1978 (Supp. 78-3). R20-6-406 recodified from R4-14-406 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).
- R20-6-407. Service Companies**
- A. Scope.** This rule shall apply to all service companies except those which are exempt under A.R.S. § 20-1095.02.
- B. Definitions.**
1. "Gray Market" auto means an imported motor vehicle which has not been certified for all safety, emission, and other federal and state standards prior to the arrival of the vehicle into the United States.
  2. "Service" within the meaning of Article 11, Chapter 4, Title 20 includes reimbursement for towing, car rental, lodging or travel breakdown expenses.
  3. The "Contract Holder" means the consumer as defined in A.R.S. § 20-1095(1).
- C. Application for service company permit.**
1. The application for a service company permit under this rule shall be on the form designated by the director which shall contain the following information:
    - a. The name of applicant;
    - b. Arizona address of applicant;
    - c. The home office address of applicant;
    - d. Type of entity (e.g. corporation, partnership);
    - e. Type of equipment to be serviced;
    - f. Fiscal year of applicant;
    - g. A list of suspensions, revocations or other disciplinary or rehabilitative actions against the service company in this or any other jurisdiction. The application form shall be signed under oath and acknowledged by the chief executive officer, chairman of the board of directors, or other person having power of attorney, in which case the power of attorney shall be attached.
  2. The following items shall be attached to the application form and shall complete the application:
    - a. A copy of the service company's most recent financial statement, sworn to and certified by the owner, duly elected officers, or a certified public accountant.
    - b. Evidence of having deposited cash or acceptable securities pursuant to A.R.S. § 20-1095.04.
    - c. Surety bond in lieu of deposit under subparagraph (b) on a form acceptable to the Director.
    - d. Initial nonrefundable permit fee of \$100 with each new application.
    - e. A biographical affidavit, on a form approved by the director, for each officer, director, manager or person owning 25% or more of the service company, and for each officer, director, manager or person owning 25% or more of an entity which owns the service company.

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- f. A copy of the service company's service contract, application, claim forms, brochures, and other forms used in connection with the sale.
- D. Deposit.** A service company providing a deposit of cash or alternatives to cash pursuant to A.R.S. § 20-1095.04 shall maintain the deposit in the amount required and such deposit shall not be encumbered. The deposit shall not be released except pursuant to one of the following:
1. The service company provides a bond or mechanical reimbursement policy which covers the outstanding service contract liabilities.
  2. All outstanding service contracts and liabilities thereunder have been assumed by a service company, in good standing, with the approval of the director, acknowledged by the assuming service company's administrator and acknowledged by endorsement by the mechanical reimbursement insurer or surety.
  3. Evidence satisfactory to the director that:
    - a. All outstanding service contracts and liabilities have expired or been cancelled in accordance with the service contract terms,
    - b. That all claims have been settled,
    - c. That there is no reason to believe there are any unreported claims, and
    - d. That the service company is financially able and agrees to be financially responsible for any valid unreported claims.
- E. The service contract, approval of forms.**
1. Each service company holding a service company permit or applying for such permit shall submit all contract, claim and application forms, brochures and other advertising material to the Director for approval not less than 30 days prior to the proposed effective date thereof. No form, brochure or other printed material may be used until approved by the Director or has been on file with the Director more than 30 days.
  2. No service contract shall be approved unless it contains a provision permitting the cancellation of the contract. The cancellation provision shall provide for a pro rata refund after deducting for administrative expenses associated with the cancellation. No claim incurred or paid shall be deducted from the amount to be returned. The cancellation provision shall not contain both cancellation penalty and a cancellation fee.
  3. No service contract or application shall be approved unless it:
    - a. Is written in nontechnical, readily understood language, using words with common everyday meanings;
    - b. Provides for the performance of services within a reasonable period of time of the request for such services by the holder of the contract;
    - c. Discloses on the face of the application and the contract:
      - i. The name, address and telephone number of the service company;
      - ii. The name, address and telephone number of the service contract administrator, if any;
      - iii. The name of the individual who sold the service contract.
    - d. Clearly, conspicuously and plainly states:
      - i. The services to be performed by the service company and the terms and conditions of such performance;
      - ii. The service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair.
      - iii. Each of the systems, products, appliances and components covered by the contract;
      - iv. The period during which the contract will remain in effect;
      - v. All limitations respecting the performance of services, including any restrictions as to time periods when services may be required or will be performed;
      - vi. The cost of the service contract;
      - vii. Those specific items or components which are excluded from coverage in large bold type;
      - viii. The conditions, if any, under which the service contract or coverage may be reinstated after coverage has been voided by acts or omissions by the service contract holder;
      - ix. The material acts or omissions by the contract holder which cancel or void coverage;
4. No service contract shall be approved if:
- a. The coverage may be cancelled or voided due to acts or omissions of the service company, its assignees or subcontractors for their failure to provide correct information of their failure to perform the services or repairs provided in a timely, competent, workmanlike manner;
  - b. Parts or components repaired or replaced under the service contract are excluded;
  - c. The contract can be cancelled or voided by the service company or its representatives for the following reasons including but not limited to:
    - i. Pre-existing conditions;
    - ii. Prior use or unlawful acts relating to the product;
    - iii. Misrepresentation by either the service company or its subcontractors;
    - iv. Ineligibility for the program, including gray market, high performance and GM diesel autos.
- F. Disapproval of contracts, applications or advertising.** The director may disapprove any service contract, application or advertising material that is in violation of this rule by issuing an order specifying in what respect the service contract, application or advertising material violates this rule. Any person aggrieved by such an order can demand a hearing thereon in accordance with A.R.S. § 20-1095.09.
- G. Permit expiration; renewal.**
1. Each permit issued pursuant to this rule shall expire at midnight on the last day of the service company's fiscal year. Thereafter, the service company shall have 90 days in which to file its completed renewal application including its certified financial statement and pay the renewal fee of \$100. A permit shall remain in effect upon the service company's timely payment of the renewal fee, timely filing of its annual financial statement and completed renewal application. An incomplete application will not be considered received until it is complete.
  2. Any late filing of the renewal application, financial report or late payment of the renewal fee shall be subject to a late fee of \$25 per day. Such late fee shall not release the service company of liability for other violations of these rules or other laws.

**Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Former Section R4-14-407 repealed and a new Section R4-14-407 adopted effective July 2, 1987 (Supp. 87-3). R20-6-

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407 recodified from R4-14-407 (Supp. 95-1).

R20-6-408. Expired

Historical Note

Former Section R4-14-408 renumbered as Section R4-14-409; a new Section R4-14-408 adopted effective July 15, 1987 (Supp. 87-3). R20-6-408 recodified from R4-14-408 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 3106, effective October 9, 2018 (Supp. 18-4).

R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations

- A. Applicability. This rule applies to all subscription contracts issued by hospital, medical, dental and optometric service corporations.
B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the requirements of the following rules:
1. R20-6-201. Advertisements of disability insurance.
2. R20-6-209. Unfair sex discrimination.
3. R20-6-210. Group coverage discontinuance and replacement.
4. R20-6-213. Unfair discrimination on the basis of blindness, partial blindness, or physical disability.
5. R20-6-216. Life and disability insurance policy language simplification.
6. R20-6-302. Valuation of reserves for disability policies.
7. R20-6-606. Medicare supplement insurance disclosure and minimum standards.
8. R20-6-607. Reasonableness of benefits in relation to premium charged.
C. Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

Historical Note

Adopted effective July 9, 1982 (Supp. 82-4). Former Sec-

tion R4-14-408 renumbered without change as Section R4-14-409 effective July 15, 1987 (Supp. 87-3). R20-6-409 recodified from R4-14-409 (Supp. 95-1).

ARTICLE 5. THE INSURANCE CONTRACT

R20-6-501. Ten-day Period to Examine Disability Insurance Policy

For the purpose of implementing A.R.S. §§ 20-442, 20-443, 20-826, 20-1111 and 20-1113 and to make more specific the regulation therein provided relative to policies of individual disability insurance (accident and sickness, hospitalization, medical, surgical and loss of time) issued in the State of Arizona and further to provide satisfactory public remedy against the hazards of misunderstanding by an applicant, of deception and coercion by an agent and of certain policy exclusions and limitations that cheapen the value of coverage, the Insurance Department of Arizona adopts the following rule:

- 1. Each policy of individual disability insurance, except one for which no provision for renewal is made, issued for delivery in the State of Arizona on or after October 1, 1961, by an insurance company or by a hospital or medical service corporation shall have printed on the first page thereof or attached thereto or endorsed thereupon in prominent style a notice declaring that, during a period of 10 days (or, at the insurer's option, a longer period) from the date of delivery to the policyholder, such policy may be returned for cancellation to the insurer at its home office (or, at the insurer's option, to its branch office or to the agent through whom it was purchased) and declaring further that in the event of such return the insurer will refund the entirety of any premium paid therefor, including any policy fees or other charges, and that the policy shall be deemed void from the beginning and that the parties shall be returned to their original position as if no policy had been issued.
2. The Insurance Department does not specify the particular language the notice shall contain but prefers usage of a phraseology approximately along the lines of either the longer (Form A) or shorter (Form B) sample below:

Sample Form A

NOTICE OF TEN-DAY RIGHT TO EXAMINE POLICY

The \_\_\_\_\_ Insurance Company urges you to read this policy carefully and trusts that upon doing so you will fully understand, and will be pleased with, its coverage. If, however, questions arise or information is desired, do not hesitate to consult the selling agent. In addition, should the policy for any reason be unsatisfactory, by surrendering it within ten days following receipt to our office at \_\_\_\_\_ or to the selling agent, immediately full premium will be refunded and the policy will be cancelled and deemed void and as never in force and effect.

Sample Form B

IMPORTANT NOTICE

If for any reason this policy is unsatisfactory, it may be returned for cancellation within ten days following receipt - in which case the entire premium will be refunded.

Historical Note

Former General Rule 61-7. R20-6-501 recodified from R4-14-501 (Supp. 95-1).

ARTICLE 6. TYPES OF INSURANCE CONTRACTS

R20-6-601. Regulations Governing Bail Transactions

- A. General provisions
1. Effective date
a. These regulations are effective November 1, 1960. On and after date, no bail transaction or severable portion thereof shall be conducted, directly or indirectly except in full conformity herewith.
b. No surety insurer shall furnish for use and no bail bond agent shall use any forms or documents which

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contain any provisions contrary to these regulations on or after the effective date hereof.

2. Authority. Authority for these regulations is A.R.S. §§ 20-142, 20-143 and 20-257 and A.R.S. Chapter 2, Article 3.
  3. Public interest served. These regulations serve the public interest by prohibiting inequities in bail transactions and by establishing standards of licensing and conduct for bail bond agents.
  4. Regulations as severable. These regulations shall be construed as severable, such that, where one or more Sections are held invalid, such remaining Sections will not be adversely affected.
  5. Penalty. Violation of these regulations will subject the guilty party to the penalties of A.R.S. §§ 20-114, 20-220 and 20-316 and to the enforcement procedures of A.R.S. §§ 20-152 and 20-160 through 20-166.
- B. Definitions**
1. "Bail transaction" defined. As used in these regulations, the term "bail transaction" includes solicitation and inducement, preliminary negotiation and effectuation of a contract of surety insurance and the transaction of matters subsequent thereto and arising therefrom – all in connection with the release of persons arrested or confined.
  2. "Bail bond agent" defined. As used in these regulations, the term "bail bond agent" means any person who engages in a bail transaction on behalf of a surety insurer or representative thereof.
  3. "Arrestee" defined. As used in these regulations, the term "arrestee" means any person arrested or detained whose release on bail is solicited or procured or concerning whose release negotiations are commenced.
  4. "Director" defined. As used in these regulations, the term "Director" means the Director of Insurance of the state.
- C. Licensing**
1. Application for license. Each application for original or renewal license as a bail bond agent shall be on a form furnished by the Director, and each applicant for such license shall furnish such supplementary information and supporting statements as the Director may require.
  2. Prohibited associations. A bail bond license shall not be issued to, renewed for or maintained by any person who associates regularly with criminals, gamblers or persons of poor repute – except to the extent such association is required by business or professional duty and responsibility.
  3. Transactions by unlicensed persons prohibited. No bail bond agent shall directly or indirectly permit any person on his behalf to solicit or negotiate bail transactions unless such person is duly licensed by the Director.
  4. Employees. Employees of bail bond agents performing only clerical duties need not be licensed hereunder and shall be deemed not engaged in bail transactions.
- D. Conduct of bail bond agents**
1. Disclosure of business. Every bail bond agent shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting.
  2. Control of employees. A bail bond agent shall exercise direct supervision over his employees and keep informed of their actions as his employees.
  3. Prohibited employees. No bail bond agent shall have in his employ at any time any criminal, gambler or person of poor repute.
  4. Acting for attorney. No bail bond agent shall receive, or collect for an attorney any money or other item of value for attorney's fee, costs or any other purpose on behalf of an arrestee, unless a receipt is given therefor.
5. Informants prohibited. No bail bond agent shall for any purpose, directly or indirectly, enter into an arrangement of any kind or have an understanding with a law enforcement officer, with a newspaper employee, with a messenger service or employee thereof, with a trusty in a jail, with other person incarcerated in a jail, or with any person whatever, to inform or notify any bail bond agent directly or indirectly of:
    - a. The existence of a criminal complaint;
    - b. The fact of an arrest; or
    - c. The fact that an arrest of any person is pending or contemplated; or
    - d. Any information pertaining to matters set forth in (a), (b), and (c) hereof or to the persons involved therewith.
  6. Compliance with rules of public authority. No bail bond agent shall solicit any person in a bail transaction in a prison or jail or other place of detention, court or public institution connected with the administration of justice unless said bail bond agent has fully complied with every rule, regulation and ordinance issued by each public authority governing the conduct of persons in or about said premises.
  7. Representations to public authority
    - a. No bail bond agent shall make any misleading or untrue representation to a court or to a public official with respect to a bail transaction, nor for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred.
    - b. Every bail bond agent shall truthfully and fully answer every question asked him by the Director or his representative respecting his bail transactions and matters relating to the conduct of his bail business. Any bail bond agent may have his attorney present when he answers any such question.
  8. Maintenance of records. Every bail bond agent shall keep complete records of all business done under authority of his license. Such records shall be open to inspection or examination by the Director or his representatives at all reasonable times at the principal place of business of the bail bond agent as designated in his license.
- E. Charges, collateral, refunds and rebates**
1. Rates
    - a. No bail bond agent shall issue or deliver a bail bond except at the premium rates most recently filed and approved by the Director in accordance with A.R.S. § 20-357.
    - b. Every bail bond agent shall post the premium rates of the surety insurer he represents in a conspicuous manner at his place of business.
  2. Charges permitted. No bail bond agent shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:
    - a. To pay the premium at the rates established by the surety insurer and approved by the Director.
    - b. To provide collateral.
    - c. To reimburse himself for actual and reasonable expenses incurred in connection with the individual bail transaction, including:
      - i. Guard fees after the first 12 hours following release of an arrestee on bail;

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- ii. Notary fees, recording fees, necessary long distance telephone expenses, telegram charges, and travel expenses for other than local community travel.
  - iii. Any other actual expenditure necessary to the bail transaction which is not usually and customarily incurred in connection with the ordinary operation and conduct of bail transactions.
3. Delivery of documents to arrestee
- a. Every bail bond agent shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or to the principal person with whom negotiations were made, if other than the arrestee, a copy of the bail bond premium agreement, which shall include:
    - i. The name of the surety insurer and the name and business address of the bail bond agent.
    - ii. The amount of bail and the premium thereof.
  - b. The bail bond agent shall also deliver at such time a statement detailing all charges in addition to the premium, the amount received on account, the unpaid balance if any, and a description of and a receipt for any collateral received.
4. Collateral
- a. Any bail bond agent who receives collateral in connection with a bail transaction shall do so in a fiduciary capacity and, prior to any forfeiture of bail, shall keep such collateral separate and apart from any other funds, assets or property of such bail bond agent.
  - b. Any collateral received shall be returned to the person who deposited it with the bail bond agent or any assignee as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged. Where such collateral has been deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated, or, if any bail bond agent fails to cooperate fully with any authorized official to secure the termination of such liability, immediately upon the accrual of any right to secure an order of termination of liability.
  - c. When such collateral has been deposited as security for unpaid premium or charges and, if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the bail bond agent, collateral other than cash may be levied upon in the manner provided by law and cash collateral up to the amount of such unpaid premium on charges may be applied in payment thereof.
  - d. If collateral received by a bail bond agent is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon application of the collateral to the forfeiture subject, however, to any claim of the bail bond agent for unpaid premium or charges as provided in subparagraph (c) of paragraph (4) of subsection (E), or as agreed to in writing by the bail bond agent and arrestee or his indemnitor.
5. Premium refund upon surrender of arrestee. No bail bond agent shall surrender an arrestee to custody prior to the time specified in the bail bond for the appearance of the arrestee, or prior to any other occasion when the presence of the arrestee in court is lawfully required, without returning all premium paid therefor, unless as a result of judicial action, or material misrepresentation by the arrestee or his indemnitor with respect to the execution of the bail bond agreement, or a material and substantial increase in the hazard assumed. Failure of the arrestee to pay the premium, or charges permitted under these regulations or any part thereof, and failure to furnish collateral required by the bail bond agent, shall not be considered a material and substantial increase in the hazard assumed.
6. Rebating prohibited. No bail bond agent shall pay or allow in any manner, directly or indirectly, to any person who is not also a bail bond agent any commission or valuable consideration on or in connection with a bail transaction. This Section shall not prohibit payments by a bail bond agent to an unlicensed person of charges by such persons for services of the kind specified in paragraph (2) subsection (E) of this Section.

**Historical Note**

Former General Rule 60-5. R20-6-601 recodified from R4-14-601 (Supp. 95-1).

**R20-6-602. Nationwide Inland Marine Definition**

- A. Applicability.** This rule applies to risks and coverages which may be classified or identified as Marine, Inland Marine or Transportation insurance but shall not be construed to mean that the kinds of risks and coverages are solely Marine, Inland Marine or Transportation insurance in all instances. This rule shall not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and license whether used separately, in combination or otherwise.
- B. Marine and/or transportation policies may cover under the following conditions:**
1. Imports.
    - a. Imports may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.
    - b. An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and shall be deemed to have been completed when such property has been:
      - i. Sold and delivered by the importer, factor or consignee; or
      - ii. Removed from place of storage and placed on sale as part of the importer's stock in trade at a point of sale or distribution; or
      - iii. Delivered for manufacture, processing or change in form to premises of the importer or of another for any such purposes.
  2. Exports.
    - a. Exports may be covered wherever the property may be located without restriction as to time, provided the coverage of each issuing company includes hazards of transportation.
    - b. An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this rule respecting domestic shipments shall apply, provided, however, that this pro-

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- vision shall not apply to long established methods of insuring certain commodities, e.g., cotton.
3. Domestic shipments.
    - a. Domestic shipments on consignment, for sale or distribution, exhibit, or trial, or approval or auction, while in transit, while in the custody of others and while being returned, provided the coverage of each issuing company includes hazards of transportation, and further provided that in no event shall the policy cover domestic shipments on consignment on premises owned, leased or operated by the consignor.
    - b. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, and further provided that such shipments shall not be covered at manufacturing premises nor after arrival at premises owned, leased or operated by assured or purchaser.
  4. Bridges, tunnels and other instrumentalities of transportation and communication excluding buildings, their improvements and betterments, their furniture and furnishings, fixed contents and supplies held in storage. The foregoing includes:
    - a. Bridges, tunnels, other similar instrumentalities, including auxiliary facilities and equipment attendant thereto.
    - b. Piers, wharves, docks, slips, dry docks and marine railways.
    - c. Pipelines, including on-line propulsion, regulating and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating or conditioning plants.
    - d. Power transmission and telephone and telegraph lines, excluding all property at generating, converting or transforming stations, substations and exchanges.
    - e. Radio and television communication equipment in use as such including towers and antennae with auxiliary equipment, and appurtenant electrical operating and control apparatus.
    - f. Outdoor cranes, loading bridges and similar equipment used to load, unload and transport.
  5. Personal Property Floater Risks covering individuals and/or generally
    - a. Personal Effects Floater Policies
    - b. The Personal Property Floater
    - c. Government Service Floater
    - d. Personal Fur Floaters
    - e. Personal Jewelry Floaters
    - f. Wedding Present Floaters for not exceeding 90 days after the date of the wedding.
    - g. Silverware Floaters.
    - h. Fine Arts Floaters, covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit.
    - i. Stamp and Coin Floaters.
    - j. Musical Instrument Floaters. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
    - k. Mobile Articles, Machinery and Equipment Floaters, excluding vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use, covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
  6. Commercial Property Floater Risks covering property pertaining to a business, profession or occupation.
    - a. Radium Floaters.
    - b. Physicians' and Surgeons Instrument Floaters. Such policies may include coverage of such furniture, fixtures and tenant assured's interest in such improvements and betterments of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.
    - c. Pattern and Die Floaters.
    - d. Theatrical Floaters, excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes.
    - e. Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
    - f. Salesmen's Samples Floaters.
    - g. Exhibition Policies on property while on exhibition and in transit to or from such exhibitions.
    - h. Live Animal Floaters.
    - i. Builders Risks and/or Installation Risks covering interest of owner, seller or contractor, against loss or damage to machinery, equipment, building materials or supplies, being used with and during the course of installation, testing, building, renovating or repairing. Such policies may cover at points or places where work is being performed, while in transit and during temporary storage or deposit, of property designated for and awaiting specific installation, building, renovating or repairing.
      - i. Such coverage shall be limited to Builders Risks or Installation Risks where Perils in addition to Fire and Extended Coverage are to be insured.
      - ii. If written for account of owner, the coverage shall cease upon completion and acceptance thereof; or if written for account of a seller or contractor the coverage shall terminate when the interest of the seller or contractor ceases.
    - j. Mobile Articles, Machinery and Equipment Floaters, excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use and snow plows constructed exclusively for highway use covering identified property of a mobile or floating nature, not on sale or consignment, or in course of manufacture, which has come into the custody or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies shall not cover furniture and fixtures not customarily used

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- away from premises where such property is usually kept.
- k. Property in transit to and from and in custody of bailees not owned, controlled or operated by the bailor. Such policies shall not cover bailee's property at his premises.
  - l. Installment sales and leased property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest. This Section is not intended to include machinery and equipment under certain "lease-back" contracts.
  - m. Garment Contractors Floaters.
  - n. Furriers or Fur Storer's Customer's Policies, i.e., policies under which certificates or receipt are issued by furriers or fur storer's covering specified articles the property of customers.
  - o. Accounts Receivable Policies, Valuable Papers and Records Policies.
  - p. Floor Plan Policies, covering property for sale while in possession of dealers under a Floor Plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:
    - i. Such merchandise is specifically identifiable as encumbered to the bank or lending institution.
    - ii. The dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution.
    - iii. That such policies cover in transit and do not extend beyond the termination of the dealer's interest.
    - iv. That such policies shall not cover automobiles or motor vehicles; merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.
  - q. Sign and Street Clock Policies, including neon signs, automatic or mechanical signs, street clocks, while in use as such.
  - r. Fine Arts Policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities and other similar interests.
  - s. Policies covering personal property which, when sold to the ultimate purchaser, may be covered specifically, by the owner, under Inland Marine Policies including:
    - i. Musical Instrument Dealers Policies, covering property consisting principally of musical instruments and their accessories. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
    - ii. Camera Dealers Policies, covering property consisting principally of cameras and their accessories.
    - iii. Furrier's Dealers Policies, covering property consisting principally of furs and fur garments.
    - iv. Equipment Dealers Policies, covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor; but excluding motor vehicles designed for highway use.
    - v. Stamp and Coin Dealers covering property of philatelic and numismatic nature.
    - vi. Jewelers' Block Policies.
    - vii. Fine Arts Dealers. Such policies may include coverage of money in locked safes or vaults on the Assured's premises. Such policies also may include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies and tenant insureds interest in improvements of buildings.
    - t. Wool Growers Floaters.
    - u. Domestic Bulk Liquids Policies, covering tanks and domestic bulk liquids stored therein.
    - v. Difference in Conditions Coverage excluding fire and extended coverage perils.
    - w. Electronic Data Processing Policies.
- C. Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:
1. Storage of assured's merchandise, except as hereinbefore provided.
  2. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.
  3. Furniture and fixtures and improvements and betterments to buildings.
  4. Monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

**Historical Note**

Former General Rule 59-4; Amended effective August 30, 1985 (Supp. 85-4). R20-6-602 recodified from R4-14-602 (Supp. 95-1).

**R20-6-603. Repealed****Historical Note**

Former General Rule 69-18; Repealed effective July 27, 1981 (Supp. 81-4). R20-6-603 recodified from R4-14-603 (Supp. 95-1).

**R20-6-604. Definitions**

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

"Actual loss ratio" means incurred claims divided by earned premiums at rates in use.

"Actuarially equivalent" means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, "actuarially equivalent" means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.

"Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

"Earned premiums" means earned premiums at prima facie rates and earned premiums at rates in use.

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“Earned premiums at prima facie rates” means an insurer’s actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer’s premium rates had equaled the prima facie rates in effect during the experience period.

“Earned premiums at rates in use” means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.

“Evidence of individual insurability” means information about a debtor’s health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

“Experience” means an insurer’s earned premiums and incurred claims during an experience period.

“Experience period” means a period of time for which an insurer reports income and expense information on the insurer’s credit insurance business.

“Final adjusted rates” means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

“Gross debt” means the sum of the remaining payments that a debtor owes a creditor.

“Identifiable charge” means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor’s status as insured or noninsured.

“Incurred claims” means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

“Net debt” means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

“Plan of credit insurance” means an insurance plan based on one of the following rate and coverage categories:

Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;

Credit life insurance on revolving accounts;

Credit life insurance on an age-graded basis;

Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;

Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.

“Preexisting condition” means a condition:

For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and

From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.

“Prima facie adjusted loss ratio” means incurred claims divided by earned premiums at prima facie rates.

“Prima facie rates” means the rates established by the Director as prescribed in R20-6-604.03.

“Reasonableness standard” means the requirement in A.R.S. § 20-1610(B) that an insurer’s premiums for credit insurance shall not be excessive in relation to the benefits provided under the policy.

“Rule of Anticipation” means the product of the gross single premium per \$100 of indebtedness for a debtor’s remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

**Historical Note**

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

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

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.01. Rights and Treatment of Debtors****A. Creditor Obligations.**

1. Multiple plans of insurance. If a creditor makes more than one plan of credit insurance available to debtors, the creditor shall inform each debtor of each plan for which the debtor is eligible and of the premium and charges for each plan.
2. Substitution. If a creditor requires a debtor to have credit insurance as additional security for a debt, the creditor shall inform the debtor in writing of the debtor’s right to obtain alternative coverage as prescribed in A.R.S. § 20-1614 before the loan transaction is completed.
3. Remittance of premiums. If a creditor adds an insurance charge or premium to a debt, the creditor shall remit the insurance charge or premium to the insurer within 60 days after it is added to the debt.

**B. Creditor and insurer obligations regarding insurance on refinanced debt.**

1. If a debt is discharged because the debtor refinances the debt before the scheduled maturity date, the creditor shall notify the insurer that issued the credit insurance on the discharged debt.

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2. An insurer shall not issue any credit insurance that covers the refinanced debt with an effective date preceding the termination date of the insurance on the original debt.
  3. The insurer issuing the coverage on the discharged debt shall refund to or credit the debtor with all unearned insurance charges or premium according to R20-6-604.06.
  4. If a debt is refinanced, the effective date of the policy provisions in any new insurance covering the refinanced debt shall be the first date on which the debtor became insured under the previous policy. An insurer may apply any new exclusion period or preexisting condition limitation only to the portion of the new loan that exceeds the previous loan.
- C. Required policy provisions.**
1. Termination provisions for group policies. A group credit insurance policy shall provide for continued coverage of debtors covered under the policy if the policy terminates, as follows:
    - a. For a policy with a single premium payment, or any other payment method that prepays coverage for more than one month, a provision requiring continued insurance coverage for the entire period for which the premium has been paid; and
    - b. For a policy with a monthly premium payment, a provision requiring the insurer to send the debtor a termination notice at least 30 days before the effective date of termination, unless an insurer is issuing replacement coverage in at least the same amount, without lapse of coverage.
  2. Maximum aggregate provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.
- D. Creditor and insurer obligations when debtor prepays debt.**
1. Except as provided in subsection (D)(2), if a debtor prepays a debt in full, any credit insurance covering the debt shall terminate on the date of prepayment. The creditor and insurer shall refund to or credit the debtor with any unearned premium according to R20-6-604.06.
  2. If a debt is fully prepaid because of the debtor's death or any other lump-sum credit insurance payment, a creditor or insurer is not required to refund premium for the coverage under which the lump sum was paid.
  3. If a claim under credit disability coverage is in progress at the time of prepayment, the insurer:
    - a. May calculate the refund as if the prepayment did not occur until the end of the period for payment of benefits, and
    - b. Is not required to refund premiums for any period for which credit disability benefits are payable.
- E. Benefits payable on revolving account.** If a debtor is paying for credit insurance coverage on a revolving account and dies, the insurer shall pay a benefit amount equal to the amount of indebtedness outstanding on the date of death. The insurer may exclude preexisting conditions occurring within six months of any advance on the revolving account, running separately for each advance or charge.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.02. Satisfying the Reasonableness Standard**

- A.** An insurer shall comply with all requirements of A.R.S. § 20-1610 regarding premium and insurance charges.

- B.** An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(B) if the insurer's premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.
- C.** While in effect, the rates described in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08 are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disappearing or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.
- D.** An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05. An insurer that wishes to provide nonstandard coverage shall:
  1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
  2. Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.03. Determination of Prima Facie Rates**

- A.** The Director shall, by order, establish prima facie rates as prescribed in this Section.
- B.** At least once every three years, the Director shall:
  1. Determine the rate of expected claims on a statewide basis;
  2. Compare the rate of expected claims with the rate of actual claims for the past three years determined from the incurred claims and earned premiums at prima facie rates; and
  3. If the Director determines that the prima facie rates require adjustment, issue a notice of hearing and proposed order adjusting the actual statewide prima facie rates. The hearing date on the proposed order shall be no earlier than 45 days from the date of the notice.
- C.** The Director shall mail a copy of the notice and proposed order to:
  1. Each insurer that reported transaction of credit insurance on its annual statement immediately preceding the date of the notice, and
  2. Any other person who sends the Director a written request for notice of proceedings to adjust the prima facie rates.
- D.** Any person may submit written comments to the Director or appear at the hearing and provide oral comments on the record. Written comments shall be received no later than the close of record date specified in the notice of hearing.
- E.** The Director shall:
  1. Consider written and oral comments; and
  2. Issue a final order setting prima facie rates no later than 30 days after the close of record date specified in the notice of hearing.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.04. Credit Life Insurance Rates and Provisions**

- A.** Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit life insurance.
- B.** The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the

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prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.

- C. A credit life insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of being eligible;
  2. Have no exclusions other than for:
    - a. Suicide within six months after the effective date of coverage, or
    - b. A preexisting condition;
  3. Have no age restrictions, except the following permissible exclusions:
    - a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
    - b. An age restriction for a revolving credit life insurance policy that:
      - i. Excludes a class of debtors determined by age, or
      - ii. Provides for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70; and
  4. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.05. Credit Disability Insurance Rates and Provisions**

- A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit disability insurance.
- B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C. A credit disability insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible;
  2. Include a definition of disability that is no more restrictive than the following:
    - a. For the first 12 months of disability, the inability of the insured to perform the essential functions of the insured's occupation; and
    - b. After the first 12 months of disability, the inability of the insured to perform the essential functions of any occupation for which the insured is reasonably suited by virtue of education, training, or experience;
  3. Not include any employment requirement that a debtor be employed more than full-time on the effective date of coverage, with a definition of "full-time" as a regular work week of at least 30 hours;

4. Have no exclusions other than for disabilities resulting from:
  - a. Normal pregnancy,
  - b. Intentionally self-inflicted injury, or
  - c. A preexisting condition;
5. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge;
6. Have no age restrictions, except the following permissible exclusion:
 

An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and
7. Include a provision for a daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.06. Refund Methods**

- A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods:
1. For insurance paid by a single premium, the Rule of Anticipation method; and
  2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.
- B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.
- C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.
- D. An insurer is not required to refund any amount less than \$5.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.07. Experience Reports**

- A. By April 1 of each year, an insurer that transacts credit insurance in this state shall file with the Director an experience report, on a form specified by the Director, for each class of business that the insurer transacts as provided in this Section.
1. In this Section, a "class of business" means:
    - a. Credit unions;
    - b. Banks, savings and loan institutions, and mortgage companies;
    - c. Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5);
    - d. Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods; and
    - e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).
  2. The report shall include the following information:
    - a. Mode of premium payment,
    - b. Plan of benefits description,
    - c. Earned premiums,
    - d. Incurred claims,
    - e. Loss ratios, and
    - f. For credit life insurance, mean insurance in force.

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- B. For each day a report is late, the Director may assess a penalty as prescribed in A.R.S. § 20-223.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.08. Use of Prima Facie Rates; Rate Deviations**

- A. Use of rates greater than prima facie rates. An insurer may file for approval and use of any deviated rates that are higher than the prima facie rates referred to in R20-6-604.04 and R20-6-604.05 as prescribed in A.R.S. § 20-1610.
1. The deviated rates shall meet the minimum loss ratio standards and other requirements prescribed by R20-6-604.02.
  2. The filing shall specify the accounts to which the rates apply.
  3. The rates may be:
    - a. Applied uniformly to all accounts of the insurer; or
    - b. Applied on an equitable basis approved by the Director to accounts of the insurer for which the insurer's experience has been less favorable than expected.
- B. Approval period of deviated rates. An insurer may use a deviated rate for the same period of time as the experience period used to establish the rate, not to exceed a period of three years from the date of approval. An insurer may file for a new deviated rate before the end of the approval period, but not more often than once in any 12 month period.
- C. Approval is non-transferable. The Director's approval of a deviated rate is not transferable to another insurer. If an insurer acquires an account for which another insurer obtained a deviated rate, the successor insurer may not charge the deviated rate without obtaining approval for the deviated rate as prescribed in subsection (B).
- D. Use of rates lower than filed rates. An insurer may use a rate that is less than its filed rate without notice to the Director.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.09. Supervision of Consumer Credit Insurance Operations**

- A. At least once every three years, an insurer transacting credit insurance in Arizona shall review the credit insurance operations of each creditor with whom the insurer does business to ensure that each creditor is complying with applicable credit insurance laws. The insurer shall review the following:
1. The creditor does not charge rates in excess of the prima facie rates or any deviated rates for which the insurer obtains approval;
  2. The creditor makes benefit payments as prescribed in the policy; and
  3. The creditor refunds unearned premiums as prescribed in R20-6-604.06.
- B. The insurer shall maintain for the Director's inspection a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least three years following the end of the review.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.10. Prohibited Transactions**

- A. The practices listed in this Section are deemed unfair trade practices under A.R.S. § 20-442. An insurer that commits any

of the following practices is subject to penalties as prescribed in A.R.S. § 20-456:

1. Offering or providing a creditor with any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than payment of commissions;
  2. Agreeing to deposit with a bank or financial institution, the insurer's money or securities as a substitute for a deposit of money or securities that the financial institution would otherwise require from the creditor as a compensating balance or deposit offset for a loan or other advancement; or
  3. Depositing money or securities without interest or at a lesser rate of interest than the creditor, bank, or financial institution is currently paying on other similar deposits.
- B. This Section does not prohibit an insurer from maintaining demand deposits or premium deposit accounts that are reasonably necessary for use in the ordinary course of the insurer's business.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-605. Emergency Expired****Historical Note**

Former General Rule 72-26. Repealed effective December 4, 1986 (Supp. 86-6). Adopted as an emergency effective January 9, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days; re-adopted as an emergency with changes effective March 26, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days (Supp. 90-1). Re-adopted as an emergency without change effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. R20-6-605 recodified from R4-14-605 (Supp. 95-1).

**R20-6-606. Repealed****Historical Note**

Adopted effective July 1, 1980 (Supp. 80-3). Amended effective June 1, 1981. See also subsection (G) (Supp. 81-1). Amended subsections (D), (E)(3)(a), (F)(2)(b), (3)(a), (4)(e), (G), and (H) effective January 11, 1982 (Supp. 82-1). Amended subsections (G) and (H) as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Amended and readopted as an emergency effective November 18, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Corrected and readopted as an emergency effective February 10, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Amended effective August 4, 1989 (Supp. 89-3). Amended and adopted as an emergency effective September 13, 1989 (Supp. 89-3). Emergency expired (Supp. 89-4). Amended effective November 19, 1990 (Supp. 90-4). Repealed by emergency action effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Repealed again by emergency action effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Repealed effective May 28, 1992 (Supp. 92-2). R20-6-606 recodified from R4-14-606 (Supp. 95-1).

**R20-6-607. Reasonableness of Benefits in Relation to Premium Charged**

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- A. Applicability. This rule shall apply to individual disability insurance (as defined in A.R.S. § 20-253) policy forms and rates.
- B. When rate filing is required. Every individual policy form, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.
- C. General contents of all rate filings. Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the ratio, hereinafter called "anticipated loss ratio," of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this state and that the benefits are reasonable in relation to the premiums.
- D. Previously approved forms. Filings of rate revisions for a previously approved policy, rider or endorsement form shall also include the following:
  - 1. A statement of the scope and reason for the revision, and an estimate of the expected average effect on premiums including the anticipated loss ratio for the form.
  - 2. A statement as to whether the filing applies only to new business, only to in-force business, or both, and the reasons.
  - 3. A history of the experience under existing rates, including at least the data indicated in subsection (E). The history may also include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates. All additional data must be reconciled, as appropriate, to the required data. Additional data might include:
    - a. Substitution of actual claim run-offs for claim reserves and liabilities,
    - b. Determination of loss ratios with the increase in policy reserves (other than unearned premium reserves) added to benefits rather than subtracted from premiums,
    - c. Substitution of net level policy reserves for preliminary term policy reserves,
    - d. Adjustment of premiums to an annual mode basis, or
    - e. Other adjustments or schedules suited to the form and to the records of the company.
  - 4. The date and magnitude of each previous rate change, if any.
- E. Experience records. Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit to the NAIC annual statement convention blank. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued, except the data for calendar years prior to the most recent five years may be combined.

- F. Evaluation experience data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:
  - 1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
  - 2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
  - 3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
  - 4. The mix of business by risk classification.
- G. Anticipated loss ratio standard. With respect to a new form or a currently approved form, except currently approved non-cancelable policy forms, under which the average annual premium (as defined below) is expected to be at least \$700, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical expense	60%	55%	55%	50%
Loss of income and other	60%	55%	50%	45%

For a policy form including riders and endorsements, under which the expected average annual premium per policy is \$200 or more but less than \$700, subtract 5 percentage points from the numbers in the table above, or if less than \$200, subtract 10 percentage points.

The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation.)

The above anticipated loss ratio standards do not apply to a class of business which is regulated by specific statutes or regulations mandating loss ratios for such business, e.g., Medicare Supplement and Credit Life and Disability.

Definitions of Renewal Clause

OR – Optionally Renewable: renewal is at the option of the insurance company.

CR – Conditionally Renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health.

GR – Guaranteed Renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC – Non-Cancelable: renewal cannot be declined nor can rates be revised by the insurance company.

- H. Rate revisions. With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided both the following loss ratios meet the standards in subsection (G) above.
  - 1. The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;
  - 2. The anticipated loss ratio derived by dividing (a) by (b) where:
    - a. Is the sum of the accumulated benefits, from the original effective date of the form or the effective date of this regulation, whichever is later, to the

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effective date of the revision, and the present value of future benefits; and

- b. Is the sum of the accumulated premiums from the original effective date of the form or the effective date of the regulation, whichever is later, to the effective date of the revision, and the present value of future premiums. Such present values shall be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest shall be used in the calculation of these accumulated benefits and premiums and present values only if it is a significant factor in the calculation of this loss ratio.
- I. Anticipated loss ratios lower than those indicated in subsections (H)(1) and (H)(2) will require justification based on the special circumstances that may be applicable.
1. Examples of coverages requiring special consideration are as follows:
    - a. Accident only;
    - b. Short term nonrenewable, e.g., airline trip, student accident;
    - c. Specified peril, e.g., common carrier; and
    - d. Other special risks.
  2. Examples of other factors requiring special consideration are as follows:
    - a. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
    - b. Extraordinary expenses;
    - c. High risk of claim fluctuation because of the low loss frequency of the catastrophic, or experimental nature of the coverage;
    - d. Product features such as long elimination periods, high deductibles and high maximum limits;
    - e. The industrial or debit method of distribution; and
    - f. Forms issued prior to the effective date of this rule. Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.
  3. Notwithstanding the foregoing paragraphs to the contrary, hospital indemnity and cancer and other dread diseases policies shall develop the loss ratios pursuant to subsection (G).
- J. Severability provision. If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.
- K. Effective date. This rule shall become effective upon filing with the Secretary of State and shall apply to all individual disability policy form and rate filings submitted on and after said date.

**Historical Note**

Adopted effective July 14, 1981 (Supp. 81-1). R20-6-607 recodified from R4-14-607 (Supp. 95-1). Amended by final rulemaking at 24 A.A.R. 103, effective February 17, 2018 (Supp. 17-4).

**ARTICLE 7. LICENSING PROVISIONS AND PROCEDURES****R20-6-701. Repealed****Historical Note**

Former General Rule 56-1; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-701 recodified from R4-14-701 (Supp. 95-1).

**R20-6-702. Expired****Historical Note**

Former General Rule 56-2. R20-6-702 recodified from R4-14-702 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-703. Expired****Historical Note**

Former General Rule 61-6. R20-6-703 recodified from R4-14-703 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-704. Expired****Historical Note**

Former General Rule 6-19. R20-6-704 recodified from R4-14-704 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-705. Expired****Historical Note**

Former General Rule 66-13. R20-6-705 recodified from R4-14-705 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-706. Expired****Historical Note**

Former General Rule 69-15; Repealed effective February 22, 1977 (Supp. 77-1). New Section R4-14-706 adopted effective November 5, 1980 (Supp. 80-5). R20-6-706 recodified from R4-14-706 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-707. Expired****Historical Note**

Former General Rule 69-18; Amended effective March 17, 1981 (Supp. 81-2). R20-6-707 recodified from R4-14-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-708. Licensing Time-frames**

- A. Definitions. The definitions listed below apply in this Section.
1. "Administrative completeness review time frame" means the number of days from the Department's receipt of an application for a license until the Department determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies A.R.S. § 41-1072 (1).
  2. "License" has the meaning prescribed in A.R.S. § 41-1001(10).
  3. "Overall time frame" means the number of days after the Department's receipt of an application for a license during which the Department determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time

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*frame and the substantive review time frame* A.R.S. § 41-1072 (2).

4. *“Substantive review time frame” means the number of days after the completion of the administrative completeness review time frame during which the Department determines whether an application or applicant for a license meets all substantive criteria required by state or rule* A.R.S. § 41-1072(3).
- B.** The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review.
- C.** Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing of whether the application is complete or incomplete. If the application is incomplete, the Department shall issue a notice of deficiency to the applicant specifying what information or component is required to make the application administratively complete.
1. If the Department determines that an application for a license is not administratively complete, the Department shall include a comprehensive list of the specific deficiencies in the written notice provided under subsection (C). If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives the missing information from the applicant.
  2. If an applicant does not make some response to each specific deficiency in a notice of deficiency issued during an administrative completeness review, the Department may issue a notice to the applicant within 10 days after receipt of the applicant’s response, stating that the response is inadequate. The notice of inadequate response shall identify each specified deficiency to which the applicant did not make some response.
    - a. If the Department issues a notice of inadequate response under this subsection, the suspension of the administrative completeness review time-frame and the overall time-frame is not terminated.
    - b. If the Department does not issue a notice of inadequate response under this subsection, the Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.
  3. If an applicant does not make some response to each specified deficiency in a notice of deficiency issued under subsection (C)(2) within 60 days after the date of a notice of deficiency or within 60 days after a notice of inadequate response issued under subsection (C)(2), the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- D.** Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.
1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives the additional information from the applicant.
  2. If an applicant does not make some response to each component or item of information requested in a comprehensive written request for additional information, the Department may issue a notice to the applicant within 10 days after receipt of the applicant’s response stating that the response is inadequate. The notice of inadequate response shall identify each component or item of information required, to which the applicant did make some response.
    - a. If the Department issues a notice of inadequate response under this subsection, the suspension of the substantive review time-frame and overall time-frame is not terminated.
    - b. If the Department does not issue a notice of inadequate response under this subsection, the Department is not precluded from later issuing supplemental requests by mutual agreement for additional information, during the substantive review.
  3. If an applicant does not make some response to each component or item of information required in a comprehensive written request or a supplemental request for additional information, within 60 days after the date of a comprehensive written request or within 60 days after the date of the supplemental request, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- E.** Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant’s right to a hearing or the applicant’s right to appeal.
- F.** In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal holiday.
- G.** This rule applies to applications filed on or after January 1, 1999.

**Historical Note**

Former General Rule 70-22; Correction, original publication did not include Exhibit C. (Supp. 76-1). Repealed effective January 8, 1980 (Supp. 80-1). R20-6-708 recodified from R4-14-708 (Supp. 95-1). Amended effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4).

**R20-6-709. Repealed****Historical Note**

Former General Rule 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-709 recodified from R4-14-709 (Supp. 95-1).

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Table A. Licensing Time-frames Table

License	Relevant A.R.S.	Administrative Completeness	Substantive Review	Overall Time-frame
Certificate of Authority*	§ 20-216	210	90	300
Certificate of Exemption	§ 20-401.05	92	30	122
Reinsurance Intermediary	§ 20-486.01	120	60	180
Hospital, Medical, Dental, and Optometric Service Corporation	§ 20-825	210	90	300
Prepaid Dental Plan Organization	§ 20-1004	210	90	300
Life Care Provider Permit*	§ 20-1803	60	30	90
Health Care Services Organization	§ 20-1052	210	90	300
Mechanical Reimbursement Reinsurer	§ 20-1096.04	210	90	300
Prepaid Legal Insurer*	§ 20-1097.02	45	15	60
Service Representative	§ 20-285	120	60	180
Managing General Agent-Firm	§ 20-284	120	60	180
Managing General Agent-Individual	§ 20-288	120	60	180
Risk Management Consultant	§ 20-289	120	60	180
Agent, Broker and Solicitor	§ 20-291	120	60	180
Nonresident Agent and Broker	§ 20-303	120	60	180
Vending Machine	§ 20-306	120	60	180
Limited Travel Agent	§ 20-306.01	120	60	180
Adjuster	§ 20-312	120	60	180
Bail Bond Agent	§ 20-319	120	60	180
Surplus Lines Broker	§ 20-411	120	60	180
Title Insurance Agent	§ 20-1580	120	60	180
Credit Life and Disability Agents	§ 20-1612	120	60	180
Variable Contract Agent	§ 20-2662	120	60	180
Utilization Review Agent	§ 20-2505	30	90	120
Rating Organization*	§ 20-361	30	30	60
Rate Service Organization	§ 20-389	60	60	120
Qualifying Surplus Lines Insurer	§ 20-413	45	30	75
Third Party Administrator	§ 20-485.12	45	45	90
Service Companies	§ 20-1095.01	30	30	60
Risk Retention Group (Foreign)*	§ 20-2403	60	0	60
Risk Purchasing Groups	§ 20-2407	30	30	60

\* Statutory time-frames

#### Historical Note

Table 1 adopted effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4).

#### ARTICLE 8. PROHIBITED PRACTICES, PENALTIES

##### R20-6-801. Unfair Claims Settlement Practices

- A.** Applicability. This rule applies to all persons and to all insurance policies, insurance contracts and subscription contracts except policies of Worker's Compensation and title insurance. This rule is not exclusive, and other acts not herein specified, may also be deemed to be a violation of A.R.S. § 20-461, The Unfair Claims Settlement Practices Act.
- B.** Definitions

1. "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.
2. "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.
3. "Director" means the Director of Insurance of the State of Arizona.

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4. "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency of loss covered by such policy or contract.
  5. "Insurance policy or insurance contract" has the meaning of A.R.S. § 20-103.
  6. "Insurer" has the meaning of A.R.S. § 20-106(C).
  7. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
  8. "Notification of claim" means any notification, whether in writing or other means, acceptable under the terms of any insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.
  9. "Person" has the meaning of A.R.S. § 20-105.
  10. "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.
  11. "Worker's compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.
- C.** File and record documentation. The insurer's claim files shall be subject to examination by the Director or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.
- D.** Misrepresentation of policy provisions
1. No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.
  2. No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.
  3. No insurer shall deny a claim on the basis that the claimant has failed to exhibit the damaged property to the insurer, unless the insurer has requested the claimant to exhibit the property and the claimant has refused without a sound basis therefor.
  4. No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.
  5. No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
  6. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language that releases the insurer or its insured from its total liability.
- E.** Failure to acknowledge pertinent communications
1. Every insurer, upon receiving notification of a claim shall, within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.
  2. Every insurer, upon receipt of any inquiry from the Department of Insurance respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the Department with an adequate response to the inquiry.
  3. An appropriate reply shall be made within 10 working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.
  4. Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within 10 working days of notification of a claim shall constitute compliance with paragraph (1) of this subsection.
- F.** Standards for prompt investigation of claims. Every insurer shall complete investigation of a claim within 30 days after notification of claim, unless such investigation cannot reasonably be completed within such time.
- G.** Standards for prompt, fair and equitable settlements applicable to all insurers
1. Notice of acceptance or denial of claim.
    - a. Within fifteen working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.
    - b. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall also notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, 45 days from the date of the initial notification and every 45 days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.
    - c. Where there is a reasonable basis supported by specific information available for review by the Director for suspecting that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of subparagraphs (a) and (b) above. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.
  2. If a claim is denied for reasons other than those described in subparagraph (a) above, and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.
  3. Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others, except as may otherwise be provided by policy provisions.
  4. Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or

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contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's right. Such notice shall be given to first party claimants 30 days and to third party claimants 60 days before the date on which such time limit may expire.

5. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

**H. Standards for prompt, fair and equitable settlements applicable to automobile insurance**

1. When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:
  - a. The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.
  - b. The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by:
    - i. The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area.
    - ii. One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area.
  - c. When a first party automobile total loss is settled on a basis which deviates from the methods described in subparagraphs (a) and (b) above, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.
2. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's policy or insurance contract.
3. Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.
4. Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect

such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

5. If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.
  6. When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.
  7. When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.
  8. The insurer shall not use as a basis for cash settlement with a first party claimant an amount which is less than the amount which the insurer would pay if the repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.
- I. Severability.** If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons and circumstances shall not be affected.
- J. Effective date.** This rule shall become effective 90 days from the date of filing with the Secretary of State.

**Historical Note**

Adopted effective January 12, 1982 (Supp. 81-5). R20-6-801 recodified from R4-14-801 (Supp. 95-1).

**R20-6-802. Emergency Expired**

**Historical Note**

Emergency rule adopted effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule readopted without change effective September 5, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. R20-6-802 recodified from R4-14-802 (Supp. 95-1).

**ARTICLE 9. TERMINATION OR DISSOLUTION**

**R20-6-901. Reserved**

**ARTICLE 10. LONG-TERM CARE INSURANCE**

**R20-6-1001. Applicability and Scope**

Except as otherwise specifically provided, this Article applies to all long-term care insurance policies, including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care, delivered or issued for delivery in this state by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health care service organizations and all similar organizations.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1001 recodified from R4-14-1001 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1002. Definitions**

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The definitions in A.R.S. § 20-1691 and the following definitions apply in this Article.

- A.** “Benefit trigger,” for purposes of a tax-qualified long-term care insurance contract, as defined in Section 7702B(b) of the Internal Revenue Code of 1968, as amended, “benefit trigger” shall include a determination by a licensed health care practitioner that an insured is a chronically ill individual.
- B.** “Exceptional increase” means only those rate increases that an insurer has filed as exceptional and that the Director determines the need for the premium rate increase is justified due to changes in laws or regulations applicable to long-term care coverage in this state; or due to increased and unexpected utilization that affects the majority of insurers of similar products.
1. Except as provided in Sections R20-6-1014 and R20-6-1015, exceptional increases are subject to the same requirements as other premium rate schedule increases.
  2. The Director may request independent actuarial review on the issue of whether an increase should be deemed an exceptional increase.
  3. The Director may also determine whether there are any potential offsets to higher claims costs.
- C.** “Incidental,” as used in R20-6-1014(L) and R20-6-1015(L), means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy, with value measured as of the date of issue.
- D.** “Licensed health care professional” means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured’s actual functional or cognitive impairment.
- E.** “Long-term care benefit classification” means one of the following:
1. Institutional long-term care – benefits only;
  2. Non-institutional long-term care – benefits only; or
  3. Comprehensive long-term care benefits.
- F.** “Managed care plan” means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, use of specific provider networks, or a combination of these methods.
- G.** “Personal information” has the same meaning prescribed in A.R.S. § 20-2102(19).
- H.** “Privileged information” has the same meaning prescribed in A.R.S. § 20-2102(22).
- I.** “Qualified actuary” means a member in good standing of the American Academy of Actuaries.
- J.** “Similar policy forms” means all long-term care insurance policies and certificates that are issued by a particular insurer and that have the same long-term care benefit classification as a policy form being reviewed.
- professionals, such as physicians and registered nurses, to maintain the individual’s health status.
3. “Adult day care” means a program of social and health-related services for six or more individuals, that is provided during the day in a community group setting, for the purpose of supporting frail, impaired, elderly, or other disabled adults who can benefit from the services and care in a setting outside the home.
  4. “Agent” means an insurance producer as defined in A.R.S. § 20-281(5).
  5. “Bathing” means washing oneself by sponge bath, or in a tub or shower, and includes the act of getting in and out of the tub or shower.
  6. “Chronically ill individual” has the meaning prescribed for this term by A.R.S. § 20-1691(3) and Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended.
    - a. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:
      - i. Being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to loss of functional capacity; or
      - ii. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.
    - b. The term “chronically ill individual” does not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements.
  7. “Cognitive impairment” means a deficiency in a person’s:
    - a. Short or long-term memory;
    - b. Orientation as to person, place, or time;
    - c. Deductive or abstract reasoning; or
    - d. Judgment as it relates to safety awareness.
  8. “Continence” means the ability to maintain control of bowel and bladder function, or when unable to maintain control, the ability to perform associated personal hygiene, such as caring for a catheter or colostomy bag.
  9. “Dressing” means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.
  10. “Eating” means feeding oneself by getting food into the body from a receptacle such as a plate, cup, or table, or by a feeding tube or intravenously.
  11. “Guaranteed renewable” means the insured has the right to continue a long-term-care insurance policy in force by the timely payment of premiums and the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that the insurer may revise rates on a class basis.
  12. “Hands-on assistance” means physical help to an individual who could not perform an activity of daily living without help from another individual, and includes minimal, moderate, or maximal help.
  13. “Home health services” means the services described at A.R.S. § 36-151.
  14. “Level premium” means that an insurer does not have any right to change the premium, even at renewal.
  15. “Licensed health care practitioner” has the same meaning as A.R.S. § 20-1691(7).

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1002 recodified from R4-14-1002 (Supp. 95-1).

Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1003. Policy Terms**

- A.** A long-term care insurance policy delivered or issued for delivery in this state shall not use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:
1. “Activities of daily living” means eating, toileting, transferring, bathing, dressing, or continence.
  2. “Acute condition” means that an individual is medically unstable and requires frequent monitoring by medical

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16. "Maintenance or personal care services" has the same meaning as A.R.S. § 20-1691(10).
17. "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.
18. "Noncancellable" means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally cancel or make any change in any provision of the insurance or in the premium rate.
19. "Personal care" means the provision of hands-on assistance to help an individual with activities of daily living in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
20. "Qualified long-term care services" has the meaning prescribed for this term under A.R.S. § 20-1691(14) and means services that meet the requirements of Section 7702B(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventative, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.
21. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing tasks associated with personal hygiene.
22. "Transferring" means moving into or out of a bed, chair, or wheelchair.

- B.** Any long-term care policy delivered or issued for delivery in this state shall include the following policy terms and provisions as specified in this subsection:
1. "Home care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
  2. "Intermediate care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
  3. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
  4. "Skilled nursing care," "specialized care," "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care is delivered.
  5. Service providers, including "skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility" and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1003 recodified from R4-14-1003 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1004. Required Policy Provisions****A. Renewability**

1. An individual long-term care insurance policy shall contain a renewability provision which shall be either "guaranteed renewable" or "noncancellable." The renewability provision shall be appropriately captioned, shall appear on the first page of the policy, and shall state that the coverage is guaranteed renewable or noncancellable. This requirement does not apply to a long-term care insurance policy that is part of or combined with a life insurance policy that does not contain a renewability provision and that reserves the right not to renew solely to the policyholder.
2. An insurer shall not use the terms "guaranteed renewable" and "noncancellable" in any individual long-term care insurance policy without further explanatory language according to the disclosure requirements of this Article.
3. A qualified long-term care insurance policy shall have the guaranteed renewability provisions specified in Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended, in the policy.
4. A long-term care insurance policy or certificate shall include a statement that premium rates are subject to change, unless the policy does not afford the insurer the right to raise premiums.

**B. Limitations and Exclusions**

1. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."
2. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility not prohibited by A.R.S. §§ 20-1691.03 and 20-1691.05 shall describe the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."
3. A policy shall not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:
  - a. Preexisting conditions or disease;
  - b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of the benefits on the basis of Alzheimer's Disease;
  - c. Alcoholism and drug addiction;
  - d. Illness, treatment or medical condition arising out of:
    - i. War, declared or undeclared, or act of war;
    - ii. Participation in a felony, riot or insurrection;
    - iii. Service in the armed forces or auxiliary units;
    - iv. Suicide, attempted suicide, or intentionally self-inflicted injury; or
    - v. Aviation, if non-fare-paying passenger;
  - e. Treatment provided in a government facility, unless otherwise required by law;

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- f. Services for which benefits are available under Medicare or other governmental program, except Medicaid;
- g. Any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law;
- h. Services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;
- i. Expenses for services or items available or paid under another long-term care insurance or health insurance policy; or
- j. In the case of a qualified long-term care insurance policy, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be reimbursable but for the application of a deductible or coinsurance amount;
4. Subsection (B) does not prohibit exclusions and limitations by type of provider or territorial limitations. No long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:
- a. When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or
- b. When the state other than the state of policy issue licenses, certifies or registers the provider under another name.
5. "State of policy issue" means the state in which the insurer issued the individual policy or certificate.
- C.** Extension of benefits. A long-term care insurance policy shall provide that termination of long-term care insurance is without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. An insurer may limit this extension of benefits period to the duration of the benefit period, if any, or to payment of the maximum benefits and the insurer may still apply any policy waiting period and all other applicable provisions of the policy.
- D.** Reinstatement. A long-term care insurance policy shall include a provision for reinstatement of coverage if a lapse occurs if the insurer receives proof that the insured was cognitively impaired or had a loss of functional capacity before expiration of the grace period in the policy. The option to reinstate shall be available to the insured for at least five months after the date of termination and shall allow for the collection of past due premiums, as appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for these conditions set forth in the original long-term care policy.
- E.** Continuation or conversion.
1. A group long-term care insurance policy shall provide covered individuals with a basis for continuation or conversion of coverage as specified in this subsection.
  2. The policy shall include a provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, subject only to the continued timely payment of premiums when due. A group policy that restricts provision of benefits and services to, or has incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits and, in doing so, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.
3. The policy shall include a provision that an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuation of the group policy in its entirety or with respect to an insured class, who has been continuously insured under the group policy (and any group policy which it replaced) for at least six months immediately prior to termination, is entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.
  4. A converted policy shall be an individual policy of long-term care insurance providing benefits identical to or benefits that the Director determines to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity, and other plan elements.
  5. An insurer may require an individual seeking a conversion policy to make a written application for the converted policy and pay the first premium due, if any, as directed by the insurer not later than 31 days after termination of coverage under the group policy. The insurer shall issue the converted policy effective on the day following the termination of coverage under the group policy. The converted policy shall be renewable annually.
  6. Unless the group policy from which conversion is made replaced previous group coverage, the insurer shall calculate the premium for the converted policy on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.
  7. An insurer is required to provide continuation of coverage or issuance of a converted policy as provided in this subsection, unless:
    - a. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
    - b. The terminating coverage is replaced not later than 31 days after termination, by group coverage that:
      - i. Is effective on the day following the termination of coverage;
      - ii. Provides benefits identical to or benefits the Director determines to be substantially equivalent to or in excess of those provided by the terminating coverage; and
      - iii. Has a premium calculated in a manner consistent with the requirements of subsection (E)(6).
  8. Notwithstanding any other provision of this Section, a converted policy that an insurer issues to an individual

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who at the time of conversion is covered by another long-term care insurance policy providing benefits on the basis of incurred expenses, may contain a provision that reduces benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. An insurer may include this provision in the converted policy only if the converted policy also provides for a premium decrease or refund that reflects the reduction in payable benefits.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.
  10. Notwithstanding any other provision of this Section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, is entitled to continuation of coverage under the group policy if the qualifying relationship terminates by death or dissolution of marriage.
- F. Discontinuance and replacement.** If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:
1. Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and
  2. Shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.
- G. Premium Increases.**
1. An insurer shall not increase the premium charged to an insured because of:
    - a. The increasing age of the insured at ages beyond 65, or
    - b. The duration of coverage under the policy.
  2. Purchase of additional coverage is not considered a premium rate increase, however, for the calculation required under R20-6-1019, an insurer shall add to and consider the portion of the premium attributable to the additional coverage as part of the initial annual premium.
  3. A reduction in benefits is not considered a premium change, however, for the calculation required under R20-6-1019, an insurer shall base the initial annual premium on the reduced benefits.
- H. Electronic enrollment for group policies.**
1. For coverage offered to a group defined in A.R.S. § 20-1691(5)(a), any requirement that an insurer or insurance producer obtain an insured's signature is satisfied if:
    - a. The group policyholder or insurer obtains the insured's consent by telephonic or electronic enrollment, and provides the enrollee with verification of enrollment information within five business days of enrollment; and
    - b. The telephonic or electronic enrollment process has necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records, and the confidentiality of individually identifiable and privileged information.

2. If the Director requests, the insurer shall make available records showing the insurer's ability to confirm enrollment and coverage amounts.

- I. Minimum standards for home health and community care benefits.**
1. If an insurer issues a long-term care insurance policy or certificate that provides benefits for home-health or community care, the policy or certificate shall not limit or exclude benefits by any of the following:
    - a. Requiring that the insured would need skilled care in a skilled nursing facility if home health services are not provided;
    - b. Requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health services are covered;
    - c. Requiring that eligible services be provided by a registered nurse or licensed practical nurse;
    - d. Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of licensure or certification;
    - e. Requiring that the insured or claimant have an acute condition before home health services are covered;
    - f. Limiting benefits to services provided by Medicare-certified agencies or providers;
    - g. Excluding coverage for personal care services provided by a home health aide;
    - h. Requiring that home health care services be provided at a level of certification or licensure greater than that required by the eligible service; or
    - i. Excluding coverage for adult day care services.
  2. If a long-term care insurance policy provides benefits for home health or community care services, it shall provide home health or community care coverage that equals a dollar amount equivalent to at least one-half of one year's missing home benefit coverage available at the time covered home health or community care services are being received. This requirement does not apply to policies or certificates issued to residents of continuing care retirement communities.
  3. An insurer may apply home health care coverage to non-home health care benefits in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.
- J. Appeals.** Policy shall include a clear description of the process for appealing and resolving benefit determinations.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1004 recodified from R4-14-1004 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1005. Unintentional Lapse**

- A.** An insured may designate in writing at least one person to receive notice of lapse or termination of a long-term care insurance policy for nonpayment of premium, in addition to the insured. Designation shall not constitute acceptance of any liability by the third-party notice recipient for services provided to the insured.
- B.** An insurer shall not issue an individual long-term care insurance policy or certificate until the applicant has provided either a written designation of at least one person, in addition

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to the applicant, who shall receive notice of lapse or termination of the policy or certificate for nonpayment of premium, with the person's full name and home address, or the applicant's written waiver, dated and signed, indicating that the applicant chooses not to designate a notice recipient.

- C. The insurer shall use a form for written designation or waiver that provides space clearly delineated for the designation. The insurer shall include the following language on the form for waiver of the right to name a designated recipient: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that this notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."
- D. At least once every two years, an insurer shall notify the insured of the right to change the person designated to receive notice in subsection (A). An insured may add, delete, or change a designated recipient or change a designated recipient at any time by notifying the insurer in writing, and providing the name and home address for the new designated recipient or the designated recipient to be deleted.
- E. If the insured pays premiums for the long-term care insurance policy or certificate through a payroll or pension deduction plan, the insurer is not required to comply with the requirements in subsections (A) through (D) until 60 days after the insured is no longer on the payment plan.
- F. An individual long-term care insurance policy shall not lapse or be terminated for nonpayment of premium unless the insurer gives the insured and any recipient designated under subsections (A) through (D) written notice at least 30 days before the effective date of termination or lapse, by first class mail, postage prepaid, at the address provided by the insured for purposes of receiving notice of lapse or termination. An insurer shall not give notice until 30 days after the date on which a premium is due and unpaid. Notice is deemed given five days after the date of mailing.
- G. Reinstatement. In addition to the requirement in subsections (A) through (D), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of a lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy or certificate. Reinstatement after termination for other than unintentional lapse shall be governed by A.R.S. § 20-1348.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1005 recodified from R4-14-1005 (Supp. 95-1). Section R20-6-1005 renumbered to R20-6-1006; new Section R20-6-1005 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1006. Inflation Protection**

- A. An insurer shall not offer a long-term care insurance policy unless the insurer offers to the policyholder, at the time of pur-

chase, in addition to any other inflation protection, the option to purchase a policy with an inflation protection provision that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. The terms of the required provision shall be no less favorable than one of the following:

1. A provision that provides for annual increases in benefit levels compounding annually at a rate of not less than 5%;
  2. A provision that guarantees an insured the right to periodically increase benefit levels without providing evidence of insurability or health status, if the insured did not decline the option for the previous period. The increased benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning from the purchase of the existing benefit and extending until the year in which the offer is made; or
  3. A provision for coverage of a specified percentage of actual or reasonable charges that is not subject to a maximum specified indemnity amount or limit.
- B. If the policy is issued to a group, the insurer shall extend the offer required by subsection (A) to the group policyholder; except, if the policy is issued under A.R.S. § 20-1691.04(C) to a group, other than to a continuing care retirement community, the insurer shall make the offer to each proposed certificateholder.
- C. An insurer is not required to make the offer in subsection (A) for life insurance policies or riders with accelerated long-term care benefits.
- D. An insurer shall include the information listed in this subsection in or with the outline of coverage.
  1. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.
  2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall provide a revised schedule of attained-age premiums. An insurer may use a reasonable hypothetical or a graphic demonstration for this disclosure.
- E. Inflation-protection benefit increases shall continue without regard to an insured's age, claim status, claim history, or length of time the person has been insured under the policy.
- F. An insurer's offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The insurer shall disclose in the offer in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.
- G. An insurer shall include in a long-term care insurance policy inflation protection as provided in subsection (A)(1) unless the insurer obtains a rejection of inflation protection signed by the insured as required in subsection (H). The rejection may be either on the application form or on a separate form.
- H. A rejection of inflation protection is deemed part of an application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I reviewed Plans [insert description of plans], and I reject inflation protection."

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**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1006 recodified from R4-14-1006 (Supp. 95-1). R20-6-1006 renumbered to R20-6-1007; new Section R20-5-1006 renumbered from R20-6-1005 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1007. Required Disclosure Provisions**

- A.** Riders and endorsements. Except for riders or endorsements by which an insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, if an insurer adds a rider or endorsement to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy, the insurer shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall require the signed written agreement of the insured unless the increased benefits or coverage are required by law. If the insurer charges a separate additional premium for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.
- B.** Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary” or words of similar import shall define the terms and explain them in its accompanying outline of coverage.
- C.** Disclosure of tax consequences. For life insurance policies that provide an accelerated benefit for long-term care, an insurer shall provide a disclosure statement at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted, that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax adviser. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.
- D.** Benefit triggers. A long-term care insurance policy shall use activities of daily living and cognitive impairment to measure an insured’s need for long-term care. The long-term care insurance policy shall describe these terms and provisions in a separate paragraph in the policy labeled “Eligibility for the Payment of Benefits” that includes and explains:
1. Any additional benefit triggers,
  2. Benefit triggers that result in payment of different benefit levels, and
  3. Any requirement that an attending physician or other specified person certify a certain level of functional dependency for the insured to be eligible for benefits.
- E.** A long-term care insurance contract shall contain a disclosure statement in the policy and in the outline of coverage indicating whether it is intended to be a qualified long-term care insurance contract as specified in the outline of coverage in Appendix J, paragraph 3. The contract shall also include a Specification Page which shall include the benefits, amounts, durations, the premium rate including all optional benefits selected by the insured, and any other benefit data applicable to the insured.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1007 recodified from R4-14-1007 (Supp. 95-1). Former

Section R20-6-1007 renumbered to R20-6-1010; new Section R20-6-1007 renumbered from R20-6-1006 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1008. Required Disclosure of Rating Practices to Consumers**

- A.** This Section applies as follows:
1. Except as provided in subsection (A)(2), this Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005.
  2. For certificates issued under an in-force, long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the provisions of this Section apply on the first policy anniversary that occurs on or after November 10, 2005.
- B.** Unless a policy is one for which an insurer cannot increase the applicable premium rate or rate schedule, the insurer shall provide the information listed in this subsection to the applicant at the time of application or enrollment. If the method of application does not allow for delivery at that time, the insurer shall provide the information to the applicant no later than at the time of delivery of the policy or certificate.
1. A statement that the policy may be subject to rate increases in the future.
  2. An explanation of potential future premium rate revisions, and the policyholder’s or certificateholder’s option if a premium rate revision occurs.
  3. The premium rate or rate schedules applicable to the applicant that will be in effect until the insurer makes a request for an increase.
  4. A general explanation for applying premium rate or rate schedule adjustments that includes:
    - a. A description of when premium rate or rate-schedule adjustments will be effective (e.g., next anniversary date, next billing date); and
    - b. The insurer’s right to a revised premium rate or rate schedule as provided in subsection (B)(3) if the premium rate or rate schedule is changed.
  5. Information regarding each premium rate increase on this policy form or similar policy form over the past 10 years for this state or any other state that, at a minimum, identifies:
    - a. The policy forms for which premium rates have been increased;
    - b. The calendar years when the form was available for purchase; and
    - c. The amount or percent of each increase, which may be expressed as a percentage of the premium rate before the increase, or as minimum and maximum percentages if the rate increase is variable by rating characteristics.
  6. The insurer may, in a fair manner, provide explanatory information related to the rate increases in addition to the information required under subsection (B)(5).
- C.** An insurer may exclude from the disclosure required under subsection (B)(5), premium rate increases applicable to:
1. Blocks of business acquired from other nonaffiliated insurers, and
  2. Policies acquired from other nonaffiliated insurers if the increases occurred before the acquisition.
- D.** If an acquiring insurer files for a rate increase on a long-term care insurance policy form or a block of policy forms acquired from a nonaffiliated insurer on or before the later of the January 10, 2005, or the end of a 24-month period following the

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acquisition of the policies or block of policies, the acquiring insurer may exclude that rate increase from the disclosure required under subsection (B)(5). However, the nonaffiliated insurer that sells the policy form or a block of policy forms shall include that rate increase in the disclosure required under subsection (B)(5). If the acquiring insurer files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by subsection (B)(5), including disclosure of the earlier rate increase.

- E. Unless the method of application does not allow an insured to sign an acknowledgement that the insurer made the disclosures required under subsection (B) at the time of application, the applicant shall sign an acknowledgement of disclosure at that time. Otherwise, the applicant shall sign a disclosure acknowledgement no later than at the time of delivery of the policy or certificate.
- F. An insurer shall use the forms in Appendix A and Appendix B to comply with the requirements of subsections (B) through (E). The text and format of an insurer's forms shall be substantially similar to the text and format of Appendices A and B.
- G. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days before the effective date of the increase. The notice shall include the information required by subsection (B).

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1008 recodified from R4-14-1008 (Supp. 95-1). Former Section R20-6-1008 renumbered to R20-6-1011; new Section R20-6-1008 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1009. Initial Filing Requirements**

- A. This Section applies to any long-term care policy issued in this state on or after May 10, 2005.
- B. At the time of making a filing under A.R.S. § 20-1691.08, an insurer shall provide to the Director a copy of the disclosure documents required under R20-6-1008 and an actuarial certification that includes the following:
  1. The initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
  2. The policy design and coverage provided have been reviewed and taken into consideration;
  3. The underwriting and claims adjudication processes have been reviewed and taken into consideration;
  4. The premiums contain at least the minimum margin for moderately adverse experience as defined in subsection (4)(a) or the specification of and justification for a lower margin as required by subsection (4)(b).
    - a. A composite margin shall not be less than 10% of lifetime claims.
    - b. A composite margin that is less than 10% may be justified in uncommon circumstances. The proposed amount, full justification of the proposed amount and methods to monitor developing experience that would be the basis for withdrawal of approval for such lower margins must be submitted.
    - c. A composite margin lower than otherwise considered appropriate for the stand-alone long-term care

policy may be justified for long-term care benefits provided through a life policy or an annuity contract. Such lower composite margin, if utilized, shall be justified by appropriate actuarial demonstration addressing margins and volatility when considering the entirety of the product.

- d. A greater margin may be appropriate in circumstances where the company has less credible experience to support its assumptions used to determine the premium rates.
- 5. A statement that the premium rate schedule:
  - a. Is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits, or
  - b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences; and
- 6. A statement that reserve requirements have been reviewed and considered. Support for this statement shall include:
  - a. Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held; and
  - b. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship.
- C. An actuarial memorandum shall be included that is signed by a member of the Academy of Actuaries and that addresses and supports each specific item required as part of the actuarial certification and provides at least the following:
  1. An explanation of the review performed by the actuary prior to making the statements in subsections (B)(2) and (B)(3);
  2. A complete description of pricing assumptions;
  3. Sources and levels of margins incorporated into the gross premiums that are the basis for the statement in subsection (B)(1) of the actuarial certification and an explanation of the analysis and testing performed in determining the sufficiency of the margins. The actuary shall clearly describe deviations in margins between ages, sexes, plans or states. Deviations in margins required to be described are other than those produced utilizing generally accepted actuarial methods for smoothing and interpolating gross premium scales; and
  4. A demonstration that the gross premiums include the minimum composite margin specified in subsection (B)(4).
- D. In any review of the actuarial certification and actuarial memorandum, the Director may request review by an actuary with experience in long-term care pricing who is independent of the insurer. In the event the Director asks for additional information as a result of any review, the period in A.R.S. § 20-1691.08 does not include the period during which the insurer is preparing the requested information.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1009 recodified from R4-14-1009 (Supp. 95-1). Section R20-6-1009 renumbered to R20-6-1012; new Section R20-6-1009 made by final rulemaking at 10 A.A.R. 4661,

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effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1010. Requirements for Application Forms and Replacement Coverage; Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates; Reporting Requirements**

- A.** An insurer's application form for a long-term care insurance policy shall include the questions listed in this Section to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other health or long-term care policy or certificate presently in force. An insurer may include the questions in a supplementary application or other form to be signed by the applicant and insurance producer, except where the coverage is sold without an insurance producer. For a replacement policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the insurer may modify the questions only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificateholder has been notified of the replacement.
1. Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?
  2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?
    - a. If so, with which company?
    - b. If that policy lapsed, when did it lapse?
  3. Are you covered by Medicaid?
  4. Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?
- B.** The application or enrollment form for such policies or certificates shall clearly indicate the payment plan the applicant selects.
- C.** An insurance producer shall list any other health insurance policies the insurance producer has sold to the applicant, including:
1. Policies that are still in force, and
  2. Policies sold in the past five years that are no longer in force.
- D.** Solicitations Other than Direct Response. On determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its insurance producer; shall furnish the applicant, before issuing or delivering the individual long-term care insurance policy, a notice that substantially conforms to the form prescribed in Appendix C or D regarding replacement of health or long-term care coverage. The insurer shall:
1. Give one copy of the notice to the applicant, and
  2. Keep an additional copy signed by the applicant.
- E.** Direct Response Solicitations. Insurers using direct response solicitation methods as defined in A.R.S. § 20-1661 shall deliver a notice that substantially conforms to the form prescribed in Appendix C or D regarding replacement of health or long-term care coverage to the applicant upon issuance of the policy.
- F.** If replacement is intended, the replacing insurer shall send the existing insurer written notice of the proposed replacement within five working days from the date the replacing insurer receives the application or issues the policy, whichever is sooner. The notice shall identify the existing policy by name of the insurer and the insured, and policy number or insured's address including zip code.
- G.** A life insurance policy that accelerate benefits for long-term care shall comply with this Section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Title 20, Chapter 6, Article 1.1. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with the requirements of this Section and with A.R.S. Title 20, Chapter 6, Article 1.1.
- H.** Prohibition against preexisting conditions and probationary periods in replacement policies or certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits if similar exclusions are satisfied under the original policy.
- I.** Reporting requirements.
1. An insurer shall maintain the following records for each insurance producer:
    - a. The amount of the insurance producer's replacement sales as a percent of the insurance producer's total annual sales, and
    - b. The amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.
  2. No later than June 30 of each year, on the forms specified in Appendix E and Appendix F, an insurer shall report the following information for the preceding calendar year to the Department:
    - a. The 10% of its insurance producers licensed in Arizona with the greatest percentages of lapses and replacements as measured by subsection (I)(1);
    - b. The number of lapsed policies as a percent of the total annual sales and as a percent of the insurer's total number of policies in force as of the end of the preceding calendar year;
    - c. The number of replacement policies sold as a percent of the insurer's total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year; and
    - d. For qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.
- J.** In subsection (I):
1. "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.
  2. "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.
  3. "Policy" means only long-term care insurance.
  4. "Report" means on a statewide basis.
- K.** Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance. Reports required under this Section shall be filed with the Director.
- L.** Annual rate certification requirements. This subsection applies to any long-term care policy issued in Arizona on or after November 10, 2017. The following annual submission requirements apply subsequent to initial rate filings for indi-

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vidual long-term care insurance policies made under this Section:

1. An actuarial certification prepared, dated and signed by a member of the American Academy of Actuaries which contains a statement of the sufficiency of the current premium rate schedule, including:
  - a. For the rate schedules currently marketed, that the premium rate schedule continues to be sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated or a statement that margins for moderately adverse experience may no longer be sufficient. For a statement that margins for moderately adverse experience may no longer be sufficient, the insurer shall provide to the Director, within 60 days of the date the actuarial certification is submitted to the Director, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience so that the ultimate premium rate schedule would be reasonably expected to be sustainable over the future life of the form with no future premium increases anticipated. Failure to submit a plan of action to the Director within 60 days or to comply with the time frame stated in the plan of action constitutes grounds for the Director to withdraw or modify approval of the form for future sales pursuant to A.R.S. § 20-1691.08.
  - b. For the rate schedules that are no longer marketed, that the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions or that the premium rate schedule may no longer be sufficient. If the premium rate schedule is no longer sufficient, the insurer shall provide to the Director, within 60 days of the date the actuarial certification is submitted to the Director, a plan of action, including time frame, for the re-establishment of adequate margins for moderately adverse experience;
2. A description of the review performed that led to the statement; and
3. An actuarial memorandum dated and signed by a member of the American Academy of Actuaries who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:
  - a. A detailed explanation of the data sources and review performed by the actuary prior to making the statement in subsection (L)(1),
  - b. A complete description of experience assumptions and their relationship to the initial pricing assumptions,
  - c. A description of the credibility of the experience data, and
  - d. An explanation of the analysis and testing performed in determining the current presence of margins.
4. The actuarial certification required pursuant to subsection (L)(1) must be based on calendar year data and submitted annually starting in the second year following the year in which the initial rate schedules are first used. The actuarial memorandum required pursuant to subsection (L)(3) must be submitted at least once every three years with the certification.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1010 recodified from R4-14-1010 (Supp. 95-1). R20-6-

1010 renumbered to R20-6-1013; new Section R20-6-1010 renumbered from R20-6-1007 and amended by final by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

#### R20-6-1011. Prohibition Against Post-claims Underwriting

- A. An application for a long-term care insurance policy or certificate that is not guaranteed issue shall meet the requirements of this Section.
  1. The application shall contain clear and unambiguous questions designed to ascertain the applicant's health condition.
    - a. If the application has a question asking whether the applicant has had medication prescribed by a physician, the application shall also ask the applicant to list the prescribed medication.
    - b. If the insurer knew or reasonably should have known that the medications listed in the application are related to a medical condition for which coverage would otherwise be denied, the insurer shall not rescind the policy or certificate for that condition.
  2. The application shall include the following language which shall be set out conspicuously and in close conjunction with the applicant's signature block: "**Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy.**"
  3. The policy or certificate shall contain, at the time of delivery, the following language, or language substantially similar to the following, set out conspicuously: "**Caution: The issuance of this long-term care insurance [policy] [certificate] is based on your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].**"
- B. Before issuing a long-term care insurance policy or certificate that is not guaranteed issue to an applicant age 80 or older, the insurer shall obtain one of the following:
  1. A report of a physical examination,
  2. An assessment of functional capacity,
  3. An attending physician's statement, or
  4. Copies of medical records.
- C. The insurer or its insurance producer shall deliver a copy of the completed application or enrollment form, as applicable, to the insured no later than at the time of delivery of the policy or certificate unless the insurer gave a copy to the applicant it at the time of application.
- D. An insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and country-wide, except those which the insured voluntarily effectuated.
- E. On or before March 31 of each year, an insurer shall report the following information to the Director for the preceding calendar year, using the form prescribed in Appendix G:
  1. Insurer name, address, phone number;
  2. As to each rescission except those voluntarily effectuated by the insured:
    - a. Policy form number,
    - b. Policy and certificate number,
    - c. Name of the insured,

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- d. Date of policy issuance,
  - e. Date claim submitted,
  - f. Date of rescission, and
  - g. Detailed reason for rescission; and
3. Signature, name and title of the preparer, and date prepared.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1011 recodified from R4-14-1011 (Supp. 95-1). R20-6-1011 renumbered to R20-6-1014; new Section R20-6-1011 renumbered from R20-6-1008 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1012. Reserve Standards**

- A.** If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders, an insurer shall determine policy reserves for long-term care benefits under A.R.S. § 20-510. An insurer shall also establish claim reserves for a policy or rider in claim status.
- B.** An insurer shall base reserves for policies and riders under subsection (A) on the multiple decrement model using all relevant decrements except for voluntary termination rates. An insurer may use single decrement approximations if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The insurer, when calculating reserves, may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. The insurer shall not set the reserves for the long-term care benefit and the life insurance benefit to be less than the reserves for the life insurance benefit assuming no long-term care benefit.
- C.** In the development and calculation of reserves for policies and riders subject to this Section, an insurer shall give due regard to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which impact projected claim costs including the following:
1. Definition of insured events,
  2. Covered long-term care facilities,
  3. Existence of home convalescence care coverage,
  4. Definition of facilities,
  5. Existence or absence of barriers to eligibility,
  6. Premium waiver provision,
  7. Renewability,
  8. Ability to raise premiums,
  9. Marketing method,
  10. Underwriting procedures,
  11. Claims adjustment procedures,
  12. Waiting period,
  13. Maximum benefit,
  14. Availability of eligible facilities,
  15. Margins in claim costs,
  16. Optional nature of benefit,
  17. Delay in eligibility for benefit,
  18. Inflation protection provisions,
  19. Guaranteed insurability option, and
  20. Other similar or comparable factors affecting risk.
- D.** A member of the American Academy of Actuaries shall certify an insurer's use of any applicable valuation morbidity table as appropriate as a statutory valuation table.
- E.** When long-term care benefits are provided other than as described in subsection (A), an insurer shall determine reserves under A.R.S. § 20-508.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-

1012 recodified from R4-14-1012 (Supp. 95-1). R20-6-1012 renumbered to R20-6-1016; new Section R20-6-1012 renumbered from R20-6-1009 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section repealed; new Section renumbered from R20-6-1013 and amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1013. Loss Ratio**

- A.** This Section applies to policies and certificates issued any time prior to May 10, 2005.
- B.** Benefits under an individual long-term care insurance policy are deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the director shall consider all relevant factors, including:
1. Statistical credibility of incurred claims experience and earned premiums;
  2. The period for which rates are computed to provide coverage;
  3. Experienced and projected trends;
  4. Concentration of experience within early policy duration;
  5. Expected claim fluctuation;
  6. Experience refunds, adjustments, or dividends;
  7. Renewability features;
  8. All appropriate expense factors;
  9. Interest;
  10. Experimental nature of the coverage;
  11. Policy reserves;
  12. Mix of business by risk classification; and
  13. Product features such as long elimination periods, high deductibles, and high maximum limits.
- C.** A premium rate schedule or proposed revision to a premium rate schedule that is expected to produce, over the lifetime of the long-term care insurance policy, benefits that are less than 60% of the proposed premium rate schedule is deemed to be unreasonable.
- D.** Subsections (B) and (C) do not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is deemed to provide reasonable benefits in relation to premiums paid if the policy complies with all of the following:
1. The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
  2. The portion of the policy that provides life insurance benefits complies with the nonforfeiture requirements of A.R.S. § 20-1231;
  3. The policy complies with the disclosure requirements of A.R.S. § 20-1691.06(A) through (E);
  4. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes the following information:
    - a. A description of the basis on which the long-term care rates were determined;
    - b. A description of the basis for the reserves;
    - c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
    - d. A description and a table of each actuarial assumption used; for expenses, an insurer shall include per-

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- cent of premium dollars per policy and dollars per unit of benefits, if any;
- e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
  - f. The estimated average annual premium per policy and the average issue age;
  - g. A statement as to whether underwriting is performed, including:
    - i. Time of underwriting;
    - ii. A description of the type of underwriting used, such as medical underwriting or functional assessment underwriting; and
    - iii. For a group policy, whether an enrollee's dependents are subject to underwriting; and
  - h. A description of the effect of the long-term care policy provisions on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1013 recodified from R4-14-1013 (Supp. 95-1). Section R20-6-1013 renumbered to R20-6-1017; new Section R20-6-1013 renumbered from R20-6-1010 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1013 renumbered to R20-6-1012; new Section R20-6-1013 renumbered from R20-6-1014 and amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1014. Premium Rate Schedule Increase**

- A. This Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005 and prior to November 10, 2017.
- B. An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 60 days before issuing notice to its policyholders. The notice to the Director shall include:
  1. Information required by R20-6-1008;
  2. Certification by a qualified actuary that:
    - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
    - b. The premium rate filing complies with the provisions of this Section; and
    - c. The insurer may request a premium rate schedule increase less than what is required under this Section and the Director may approve the premium rate schedule increase, without submission of the certification required by subsection (B)(2)(a), if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required by subsection (B)(2)(a), the premium rate schedule increase filing satisfies all other requirements of this Section, and is, in the opinion of the Director, in the best interest of the policyholders.
  3. An actuarial memorandum justifying the rate schedule change request that includes:
    - a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including the following:
      - i. Any assumptions that deviate from those used for pricing other forms currently available for sale;
      - ii. Annual values for the five years preceding and the three years following the valuation date, provided separately;
      - iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase; and
      - iv. A demonstration of compliance with subsection (C).
    - b. For exceptional increases, the actuarial memorandum shall also include:
      - i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
      - ii. If the Director determines under Section R20-6-1002(B)(3) that offsets may exist, the insurer shall use appropriate net projected experience;
  - c. Disclosure of how reserves have been incorporated in this rate increase when the rate increase will trigger contingent benefit upon lapse;
  - d. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and any other actions of the insurer on which the actuary has relied;
  - e. A statement that the actuary has considered policy design, underwriting, and claims adjudication practices;
  - f. Composite rates reflecting projections of new certificates in the event it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase; and
  - g. A demonstration that actual and projected costs exceed costs anticipated at the time of the initial pricing under moderately adverse experience and that the composite margin specified in R20-6-1009(B)(4) is projected to be exhausted;
4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless the insurer provides the Director with documentation justifying the greater rate; and
5. Upon the Director's request, other similar and related information the Director may require to evaluate the premium rate schedule increase.
- C. All premium rate schedule increases shall be determined in accordance with the following requirements:
  1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;
  2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:
    - a. The accumulated value of the initial earned premium times 58%;
    - b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
    - c. The present value of future projected initial earned premiums times 58%; and

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- d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
3. If a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) shall also include 70% for exceptional rate increase amounts; and
4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIC Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).
- D.** For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (B)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder in lieu of filing with the Director.
- E.** If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (B)(3)(a), for the Director's approval every five years following the end of the required period in subsection (D). For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.
- F.** If the Director finds that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (C), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (B)(3)(f), if applicable.
- G.** If the majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse, the insurer shall file:
1. A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Director may impose the conditions in subsections (H) through (J); and
  2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (C) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in subsections (C)(2)(a) and (C)(2)(c).
- H.** For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:
1. The rate increase is not the first rate increase requested for the specific policy form or forms,
  2. The rate increase is not an exceptional increase, and
  3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.
- I.** If the Director finds excess lapsation under subsection (H) has occurred, is anticipated in the filing or is evidenced in the actual results as presenting in the updated projections provided by the insurer following the requested rate increase, the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The information communicating the offer is subject to the Director's approval. The offer shall:
1. Be based on actuarially sound principles, but not on attained age;
  2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and
  3. Allow the insured the option of retaining the existing coverage.
- J.** The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (I) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:
1. The maximum rate increase determined based on the combined experience; and
  2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus 10%.
- K.** If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (H) through (J), prohibit the insurer from the following:
1. Filing and marketing comparable coverage for a period of up to five years, and
  2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.
- L.** Subsections (A) through (K) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as defined under R20-6-1002(C), if the policy complies with all of the following provisions:
1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
  2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
  3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;
  4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
    - a. A.R.S. Title 20, Chapter 6, Article 1.2; and
    - b. A.R.S. Title 20, Chapter 16, Article 2;

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5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
    - a. Description of the bases on which the actuary determined the long-term care rates and the reserves;
    - b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
    - c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
    - d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
    - e. The estimated average annual premium per policy and the average issue age;
    - f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
      - i. Whether underwriting is used, and if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
      - ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
    - g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.
- M.** Subsections (F) and (H) through (J) shall not apply to group insurance as defined in A.R.S. § 20-1691(6) where:
1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
  2. The policyholder, and not the certificateholder, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.
- Historical Note**
- Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1014 recodified from R4-14-1014 (Supp. 95-1). Section repealed; R20-6-1014 renumbered from R20-6-1011 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1014 renumbered to R20-6-1013; new Section R20-6-1014 renumbered from R20-6-1015 and amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).
- R20-6-1015. Premium Rate Schedule Increases for Policies Subject to Loss Ratio Limits Related to Original Filings**
- A.** This Section applies to any long-term care policy or certificate issued in this state on or after November 10, 2017.
- B.** An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 60 days before issuing notice to its policyholders. The notice to the Director shall include:
1. Information required by R20-6-1008;
  2. Certification by a qualified actuary that:
    - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
    - b. The premium rate filing complies with the provisions of this Section; and
    - c. The insurer may request a premium rate schedule increase less than what is required under this Section and the Director may approve the premium rate schedule increase, without submission of the certification required by subsection (B)(2)(a), if the actuarial memorandum discloses the premium rate schedule increase necessary to make the certification required by subsection (B)(2)(a), the premium rate schedule increase filing satisfies all other requirements of this Section, and is, in the opinion of the Director, in the best interest of the policyholders.
- 3.** An actuarial memorandum justifying the rate schedule change request that includes:
- a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including the following:
    - i. Any assumptions that deviate from those used for pricing other forms currently available for sale;
    - ii. Annual values for the five years preceding and the three years following the valuation date, provided separately;
    - iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase; and
    - iv. A demonstration of compliance with subsection (C).
  - b. For exceptional increases, the actuarial memorandum shall also include:
    - i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
    - ii. If the Director determines under Section R20-6-1002(B)(3) that offsets may exist, the insurer shall use appropriate net projected experience;
  - c. Disclosure of how reserves have been incorporated in this rate increase when the rate increase will trigger contingent benefit upon lapse;
  - d. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and any other actions of the insurer on which the actuary has relied;
  - e. A statement that the actuary has considered policy design, underwriting, and claims adjudication practices;
  - f. Composite rates reflecting projections of new certificates in the event it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase; and
  - g. A demonstration that actual and projected costs exceed costs anticipated at the time of the initial pricing under moderately adverse experience and that the composite margin specified in R20-6-1009(B)(4) is projected to be exhausted.
- 4.** A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless the insurer provides the Director with documentation justifying the greater rate; and

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5. Upon the Director's request, other similar and related information the Director may require to evaluate the premium rate schedule increase.
- C. All premium rate schedule increases shall be determined in accordance with the following requirements:
1. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;
  2. The insurer shall calculate premium rate increases such that the sum of the lesser of either the accumulated value of the actual incurred claims (without the inclusion of active life reserves) or the accumulated value of historic expected claims (without the inclusion of active life reserves) plus the present value of the future expected incurred claims (projected without the inclusion of active life reserves) will not be less than the sum of the following:
    - a. The accumulated value of the initial earned premium times the greater of 58% or the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience;
    - b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
    - c. The present value of future projected initial earned premiums times the greater of 58% or the lifetime loss ratio consistent with the original filing including margins for moderately adverse experience; and
    - d. 85% of the present value of future projected premiums not in subsection (C)(2)(c) on an earned basis;
  3. Historic expected claims shall be calculated based on the original filing assumptions assumed until new assumptions are filed as part of a rate increase. New assumptions shall be used for all periods beyond each requested effective date of a rate increase. Historic expected claims are calculated for each calendar year based on the in-force at the beginning of the calendar year. Historic expected claims shall include margins for moderately adverse experience; either amounts included in the claims that were used to determine the lifetime loss ratio consistent with the original filing or as modified in any rate increase filing;
  4. In the event that a policy form has both exceptional and other increases, the values in subsections (C)(2)(b) and (C)(2)(d) will also include 70% for exceptional rate increase amounts; and
  5. All present and accumulated values used to determine rate increases, including the lifetime loss ratio consistent with the original filing reflecting margins for moderately adverse experience, shall use the maximum valuation interest rate for contract reserves as specified in A.R.S. § 20-508. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.
- D. For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (B)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the reporting period beyond three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (M), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the Director.
- E. If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (B)(3)(a), for the Director's approval every five years following the end of the required period in subsection (D). For group insurance policies that meet the conditions in subsection (M), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.
- F. If the Director finds that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (C), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (B)(3)(f), if applicable.
- G. If the majority of policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file a plan, subject to approval by the Director, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. Otherwise, the Director may impose the conditions in subsections (H) through (J).
- H. For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:
  1. The rate increase is not the first rate increase requested for the specific policy form or forms;
  2. The rate increase is not an exceptional increase; and
  3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.
- I. If the Director finds excess lapsation under subsection (H) has occurred, is anticipated in the filing or is evidenced in the actual results as presenting in the updated projections provided by the insurer following the requested rate increase, the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The information communicating the offer is subject to the Director's approval. The offer shall:
  1. Be based on actuarially sound principles, but not on attained age; and
  2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and
  3. Allow the insured the option of retaining the existing coverage.
- J. The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (I) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:
  1. The maximum rate increase determined based on the combined experience; and

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2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus 10%.
- K.** If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (H) through (J), prohibit the insurer from the following:
1. Filing and marketing comparable coverage for a period of up to five years; and
  2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.
- L.** Subsections (A) through (K) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as defined under R20-6-1002(C), if the policy complies with all of the following provisions:
1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
  2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
  3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;
  4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
    - a. A.R.S. Title 20, Chapter 6, Article 1.2; and
    - b. A.R.S. Title 20, Chapter 16, Article 2.
  5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
    - a. Description of the bases on which the actuary determined the long-term care rates and the reserves;
    - b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
    - c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
    - d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
    - e. The estimated average annual premium per policy and the average issue age;
    - f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
      - i. Whether underwriting is used, and if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
      - ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
    - g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.
- M.** Subsections (F) and (H) through (J) shall not apply to group insurance as defined in A.R.S. § 20-1691(6) where:
1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or
  2. The policyholder, and not the certificateholder, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1015 recodified from R4-14-1015 (Supp. 95-1). Section R20-6-1015 renumbered to R20-6-1022; new Section R20-6-1015 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1015 renumbered to R20-6-1014; new Section R20-6-1015 made by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1016. Filing Requirements for Group Policies**

- A.** Out-of-State Policies. Before an insurer or similar organization may offer group long-term care insurance to a resident of this state under A.R.S. § 20-1691.02(D), the insurer or organization shall file with the Director evidence that a state with statutory or regulatory long-term care insurance requirements substantially similar to those of this state has approved the group policy or certificate for use in that state.
- B.** Associations. For long-term policies marketed or issued to associations, the insurer or organization shall file with the insurance department the policy, certificate, and corresponding outline of coverage.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1016 recodified from R4-14-1016 (Supp. 95-1). Section R20-6-1016 renumbered to R20-6-1023; new Section R20-6-1016 renumbered from R20-6-1012 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1017. Standards for Marketing**

- A.** Every insurer marketing long-term care insurance coverage in this state, directly or through an insurance producer shall:
1. Establish marketing procedures to assure that any comparison of policies by its insurance producers is fair and accurate, and that excessive insurance is not sold or issued;
  2. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following language: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations;"
  3. Provide the applicant with copies of the disclosure forms in Appendices A and B;
  4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance;
  5. Provide an explanation of contingent benefit upon lapse as provided for in R20-6-1019(D)(3);
  6. Provide written notice to an applicant or prospective policyholder or certificateholder advising of this state's senior insurance counseling program (SHIP), and the

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name, address, and phone number for the SHIP, at the time of solicitation; and

7. Establish auditable procedures for verifying compliance with this subsection (A).
- B.** In addition to the practices prohibited in A.R.S. § 20-441 et seq., the following acts and practices are prohibited:
1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
  2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
  3. Cold lead advertising. Making use directly or indirectly or any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.
  4. Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.
- C.** An insurer shall not market or issue a long-term care policy or certificate to an association unless the insurer files the information required under R20-6-1016(B) and annually certifies that the association has complied with the requirements of this Section.

**Historical Note**

New section R20-5-1017 renumbered from R20-6-1013 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1018. Suitability**

- A.** This Section does not apply to life insurance policies that accelerate benefits for long-term care.
- B.** Every insurer or other person marketing long-term care insurance, including an insurance producer or managing general agent, (the “issuer”) shall:
1. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant,
  2. Train its insurance producers in the use of its suitability standards, and
  3. Maintain a copy of its suitability standards and make them available for inspection upon the Director’s request.
- C.** To determine whether an applicant meets an issuer’s suitability standards, the insurance producer and issuer shall develop procedures that take the following into consideration:
1. The applicant’s ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
  2. The applicant’s goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
  3. The values, benefits, and costs of the applicant’s existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.
- D.** The issuer shall make reasonable efforts to obtain the information set out in subsection (C), including giving the applicant the “Long-Term Care Insurance Personal Worksheet” pre-

scribed in Appendix A, to complete before or at the time of application. The issuer shall use a personal worksheet that contains, at a minimum, the information contained in Appendix A, in substantially the same text and format, in not less than 12 point type. The issuer may ask the applicant to provide additional information to comply with its suitability standards. An issuer shall file a copy of its personal worksheet with the Director.

- E.** An issuer shall not consider an applicant for coverage until the issuer has received the applicant’s completed personal worksheet, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.
- F.** No one shall sell or disseminate information obtained through the personal worksheet outside the issuer that obtains the worksheet.
- G.** The issuer shall use its suitability standards to determine whether issuance of long-term care insurance coverage to a particular applicant is appropriate.
- H.** An insurance producer shall use the suitability standards developed by the issuer in marketing long-term care insurance.
- I.** When giving an applicant a personal worksheet, the issuer shall also provide the applicant with a disclosure form entitled “Things You Should Know Before You Buy Long-Term Care Insurance.” The form shall be in substantially the same format and text contained in Appendix H, in not less than 12 point type.
- J.** If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter that is substantially similar to Appendix I. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant’s intent to purchase the long-term care policy. The issuer shall have either the applicant’s returned Appendix I letter or a record of the alternative method of verification as part of the applicant’s file.
- K.** The issuer shall report annually to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter as prescribed in subsection (J).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1019. Nonforfeiture Benefit Requirement**

- A.** This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.
- B.** To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of A.R.S. § 20-1691.11, an insurer shall meet the following requirements:
1. A policy or certificate offered with nonforfeiture benefits shall have the same coverage elements, eligibility, benefit triggers and benefit length as a policy or certificate issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection (E); and
  2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

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C. If the offer required to be made under A.R.S. § 20-1691.11 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Section. Even if the non-forfeiture benefit offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in subsection (D)(4) shall still apply.

D. Contingent Benefit Upon Lapse.

1. If a prospective policyholder rejects the offer of a nonforfeiture benefit, the insurer shall provide the contingent benefit upon lapse described in this Section for individual and group policies without the nonforfeiture benefit, issued after January 10, 2005.
2. If a group policyholder elects to make the nonforfeiture benefit an option to a certificateholder, the certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.
3. The contingent benefit on lapse is triggered when:
  - a. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and
  - b. The policy or certificate lapses within 120 days of the due date of the increased premium.
  - c. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%

80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. A contingent benefit on lapse is also triggered for policies with a fixed or limited premium paying period when:
  - a. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and
  - b. The policy or certificate lapses within 120 days of the due date of the increased premium; and
  - c. The ratio in subsection (D)(6)(b) is 40% or more.
  - d. Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase on policies with a fixed or limited premium paying period	
Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

- e. This provision shall be in addition to the contingent benefit provided by subsection (D)(3) and where both are triggered, the benefit provided shall be at the option of the insured.
5. On or before the effective date of a substantial premium increase as defined in subsection (D)(3), an insurer shall:
  - a. Offer the insured the option of reducing policy benefits under the current coverage consistent with the requirements of R20-6-1025 so that required premium payments are not increased;
  - b. Offer to convert the coverage to a paid-up status with a shortened benefit period according to the terms of subsection (E), which the insured may elect at any time during the 120-day period referenced in subsection (D)(3); and
  - c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection (D)(3) is deemed to be the election of the offer to convert under subsection (5)(b) unless the automatic option in subsection (D)(6)(c) applies.
6. On or before the effective date of a substantial premium increase on policies with a fixed or limited premium paying period as defined in subsection (D)(4), an insurer shall:
  - a. Offer the insured the option of reducing policy benefits under the current coverage consistent with the requirements of R20-6-1025 so that required premium payments are not increased;

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- b. Offer to convert the coverage to paid-up status where the amount payable for each benefit is 90% of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. The insured may elect this option at any time during the 120-day period referenced in subsection (D)(4); and
- c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection (D)(4) is deemed to be the election of the offer to convert under subsection (D)(6)(b) if the ratio is 40% or more.
7. For any long-term care policy issued on or after November 10, 2017, that an insurer issued at least 20 years prior to the effective date of a substantial premium increase, the insurer shall use a rate increase value of 0% in place of all values in the above tables.
- E.** Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subsection (D)(3) but not subsection (D)(4), mean any of the following:
1. Attained age rating is defined as a schedule of premiums starting from the issue date that increases age at least 1% per year before age 50, and at least 3% per year beyond age 50.
  2. For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subsection (E)(3).
  3. The standard nonforfeiture credit equals 100% of the sum of all premiums paid, including the premiums paid before any change in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. The minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection (F).
  4. When the nonforfeiture benefit begins.
    - a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years, and thereafter.
    - b. Notwithstanding subsection (E)(4)(a), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:
      - i. The end of the tenth year following the policy or certificate issue date, or
      - ii. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.
  5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.
- F.** All benefits paid by the insurer while the policy or certificate is in premium-paying status and in the paid-up status shall not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium-paying status.
- G.** There shall be no difference in the minimum nonforfeiture benefits for group and individual policies.
- H.** The requirements in this Section are effective on or after November 10, 2005 and shall apply as follows:
1. Except as provided in subsection (H)(2) and (H)(3), this Section applies to any long-term care policy issued in this state on or after January 10, 2005.
  2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a group long-term care insurance policy as defined in A.R.S. § 20-1691(5)(a), that was in force on January 10, 2005.
  3. The provisions of this Section that apply to fixed or limited premium paying period policies shall only apply to policies issued on or after November 10, 2017.
- I.** Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of R20-6-1013, R20-6-1014 or R20-6-1015, whichever is applicable, treating the policy as a whole.
- J.** To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (D)(3) or (D)(4), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium the insured paid when first buying the policy from the original insurer.
- K.** An insurer shall offer a nonforfeiture benefit for a qualified long-term care insurance contract that is a level premium contract and the benefit shall meet the following requirements:
1. The nonforfeiture provision shall be separately captioned using the term "nonforfeiture benefit" or a substantially similar caption;
  2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the insurer may adjust the amount of the benefit initially granted only as needed to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the Director under to A.R.S. § 20-1691.08 for the same contract form; and
  3. The nonforfeiture provision shall provide at least one of the following:
    - a. Reduced paid-up premiums,
    - b. Extended term insurance,
    - c. Shortened benefit period, or
    - d. Other similar offerings that the Director has approved.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1020. Standards for Benefit Triggers**

- A.** A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Except as otherwise provided in R20-6-1021, eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.
- B.** Activities of daily living shall include at least the following as defined in R20-6-1003(A)(1) and in the policy:
1. Bathing,
  2. Continence,

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3. Dressing,
  4. Eating,
  5. Toileting, and
  6. Transferring.
- C. An insurer may use additional activities of daily living to trigger covered benefits if the activities are defined in the policy.
- D. An insurer may use additional provisions to determine when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements in subsections (A), (B) and (C).
- E. For purposes of this Section the determination of a deficiency shall not be more restrictive than:
1. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
  2. If the deficiency is due to the presence of a cognitive impairment, requiring supervision or verbal cueing by another person to protect the insured or others.
- F. Licensed or certified professionals, such as physicians, nurses or social workers, shall perform assessments of activities of daily living and cognitive impairment.
- G. The requirements in this Section are effective on and after November 10, 2005 and shall apply as follows:
1. Except as provided in subsection (G)(2), the provisions of this Section apply to a long-term care policy issued in this state on or after January 10, 2005.
  2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), which policy was in force on January 10, 2005.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1021. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts**

- A. A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided under a plan of care prescribed by a licensed health care practitioner, which is not subject to approval or modification by the insurer.
- B. A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.
- C. Licensed health care practitioners shall perform the certified determinations regarding activities of daily living and cognitive impairment required under subsection (B).
- D. Certified determinations required under subsection (B) may be performed at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certified determination may not be rescinded and additional certified determinations may not be performed until after the expiration of the 90-day period.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective

November 10, 2017 (Supp. 17-2).

**R20-6-1022. Standard Format Outline of Coverage**

- A. The outline of coverage prescribed in A.R.S. § 20-1691.06 shall be a free-standing document, using no smaller than 10 point type, and shall contain no advertising or promotional material.
- B. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that give prominence equivalent to capitalization or underscoring.
- C. An insurer shall use the text and sequence of text in the standard format outline of coverage prescribed in Appendix J, unless otherwise specifically indicated.

**Historical Note**

New Section R20-6-1022 renumbered from R20-6-1015 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1023. Requirement to Deliver Shopper's Guide**

- A. All prospective applicants of a long-term care insurance policy or certificate shall receive a long-term care insurance shopper's guide approved by the Director. This requirement may be satisfied by delivery of the current edition of the long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners.
1. In the case of insurance producer solicitation, an insurance producer shall deliver the shopper's guide before presenting an application or enrollment form.
  2. In the case of direct response solicitations, the insurer shall provide the shopper's guide with any application or enrollment form.
- B. A prospective applicant for a life insurance policy or rider containing accelerated long-term care benefits is not required to receive the guide described in subsection (A), but shall receive the policy summary required under A.R.S. § 20-1691.06.

**Historical Note**

New Section R20-6-1023 renumbered from R20-6-1016 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1024. Availability of New Health Care Services or Providers**

- A. An insurer shall notify policyholders of the availability of a new long-term policy series that provides coverage for new long-term care services or health care providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date the new policy series is made available for sale in this state.
- B. Notwithstanding subsection (A), notification is not required for any policy issued prior to the effective date of this Section or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.
- C. The insurer shall make the new coverage available in one of the following ways:
1. By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age:

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2. By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;
  3. By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or
  4. By an alternative program developed by the insurer that meets the intent of this Section if the program is filed with and approved by the Director.
- D.** An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders who purchased such a new proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.
- E.** Policies issued pursuant to this Section shall be considered exchanges and not replacements. These exchanges shall not be subject to R20-6-1010(A), (C) through (G) and R20-6-1018 and are not subject to the reporting requirements of R20-6-1010(I)(1), (I)(2)(a) through (I)(2)(c).
- F.** Where an employer, labor organization, professional, trade or occupational association offers the policy, the required notification in subsection (A) shall be made to the offering entity. However, if the policy is issued to a group defined in A.R.S. § 20-1691(5), the notification shall be to each certificateholder.
- G.** Nothing in this Section shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium, to add such new services or providers.
- H.** This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.
- I.** This Section shall become effective on or after November 10, 2017.
- B.** The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.
- C.** In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.
- D.** The provision in subsection (A) shall include a description of the process for requesting and implementing a reduction in coverage.
- E.** The premium for the reduced coverage shall:
1. Be based on the same age and underwriting class used to determine the premium for the coverage currently in force, and
  2. Be consistent with the approved rate table.
- F.** The issuer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.
- G.** If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by R20-6-1005(F).
- H.** This Section does not apply to life insurance policies or riders containing accelerated long-term benefits.
- I.** The requirements of subsections (A) through (H) shall apply to any long-term care policy issued in this state on or after November 10, 2017.
- J.** A premium increase notice required by R20-6-1008(G) shall include:
1. An offer to reduce policy benefits provided by the current coverage consistent with the requirements of this Section;
  2. A disclosure stating that all options available to the policyholder may not be of equal value; and
  3. In the case of a partnership policy, a disclosure that some benefit reduction options may result in a loss in partnership status that may reduce policyholder protections.
- K.** The requirements of subsection (J) shall apply to any rate increase implemented in this state on or after November 10, 2017.

**Historical Note**

New Section R20-6-1025 made by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1026. Instructions for Appendices**

Information that is designated as a "Drafting Instruction" in a form appended to this Article is not required to be included as part of the form. Any person using the form shall abide by the instructions when drafting, preparing, or completing the form.

**Historical Note**

New Section R20-6-1026 renumbered from R20-6-1024 by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Section R20-6-1024 renumbered to R20-6-1026; new Section R20-6-1024 made by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**R20-6-1025. Right to Reduce Coverage and Lower Premiums**

- A.** Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:
1. Reducing the maximum benefit; or
  2. Reducing the daily, weekly or monthly benefit amount.

## CHAPTER 6. DEPARTMENT OF INSURANCE

## Appendix A. Long-term Care Insurance Personal Worksheet

Long-term Care Insurance  
Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

**Premium Information**

Policy Form Numbers \_\_\_\_\_

The premium for the coverage you are considering will be [\$\_\_\_\_\_ per month, or \$\_\_\_\_\_ per year,] [a one-time single premium of \$\_\_\_\_\_.]

**Type of Policy** (noncancellable/guaranteed renewable): \_\_\_\_\_

**The Company's Right to Increase Premiums:** \_\_\_\_\_

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

**Rate Increase History**

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

**(Drafting Instruction:** A company may use the first bracketed sentence above only if it has never increased rates under any prior policy forms in this state or any other state. The issuer shall list each premium increase it has instituted on this or similar policy forms in this state or any other state during the last 10 years. The list shall provide the policy form, the calendar years the form was available for sale, and the calendar year and the amount (percentage) of each increase. The insurer shall provide minimum and maximum percentages if the rate increase is variable by rating characteristics. The insurer may provide, in a fair manner, additional explanatory information as appropriate.)

**Questions Related to Your Income**

How will you pay each year's premium?

From my Income  From my Savings/Investments  My Family will Pay

Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 50%?

**(Drafting Instruction:** The issuer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancellable policy.)

What is your annual income? (check one)  Under \$10,000  \$[10-20,000]  \$[20-30,000]  \$[30-50,000]  Over \$50,000

**(Drafting Instruction:** The issuer may choose the numbers to put in the brackets to fit its suitability standards.)

How do you expect your income to change over the next 10 years? (check one)

No change  Increase  Decrease

*If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.*

**Will you buy inflation protection?** (check one)  Yes  No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

From my Income  From my Savings/Investments  My Family will Pay

*The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.*

**(Drafting Instruction:** The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.)

**What elimination period are you considering?** Number of days \_\_\_\_\_ Approximate cost \$ \_\_\_\_\_ for that period of care.

**How are you planning to pay for your care during the elimination period?** (check one)

From my Income  From my Savings/Investments  My Family will Pay

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Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

- Under \$20,000 \$20,000-\$30,000 \$30,000-\$50,000 Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

- Stay about the same Increase Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

Form with checkboxes: The answers to the questions above describe my financial situation. or I choose not to complete this information. (Check one.) I acknowledge that the carrier and/or its insurance provider (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. I understand that the rates for this policy may increase in the future. (This box must be checked).

Signed: (Applicant) (Date)

I explained to the applicant the importance of completing this information.

Signed: (Insurance Producer) (Date)

Insurance Producer's Printed Name:

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My insurance provider has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: (Applicant) (Date)

(Drafting Instruction: Choose the appropriate sentences depending on whether this is a direct mail or insurance producer sale.) The company may contact you to verify your answers.

(Drafting Instruction: When the Long-term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the document may be removed.)

Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). Former Appendix A renumbered to Appendix C; new Appendix A made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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Appendix B. Long-term Care Insurance Potential Race Increase Disclosure Form

**Instructions:**

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

**Insurers shall provide all of the following information to the applicant:**

**Long-term Care Insurance  
Potential Rate Increase Disclosure Form**

1. **[Premium Rate] [Premium Rate Schedules]:** [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [approved] for an increase [is][are] [on the application][(\$\_\_\_\_\_)]
2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.**

3. **Rate Schedule Adjustments:**

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): \_\_\_\_\_.

4. **Potential Rate Revisions:**

**This policy is Guaranteed Renewable.** This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

**If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:**

- Pay the increased premium and continue your policy in force as is.
- Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- Exercise your contingent nonforfeiture rights.\* (This option may be available if you do not purchase a separate nonforfeiture option.)

**\*Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you have paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

**Example:**

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

<b>Contingent Nonforfeiture Cumulative Premium Increase over Initial Premium That qualifies for Contingent Nonforfeiture</b>	
(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%

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63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). Former Appendix B renumbered to Appendix D; new Appendix B made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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Appendix C. Notice to Applicant Regarding Replacement of Individual Health or Long-term Care Insurance

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL HEALTH OR LONG-TERM CARE INSURANCE

[Insurance company’s name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under your new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all of the relevant factors involved in replacing your present coverage.
4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
(Signature of Insurance Producer or Other Representative)

\_\_\_\_\_  
(Typed Name and Address of Insurance Producer)

The above “Notice to Applicant” was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant’s Signature)

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). New Appendix C renumbered from Appendix A and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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## Appendix D. Notice to Applicant Regarding Replacement of Health or Long-term Care Insurance

## NOTICE TO APPLICANT REGARDING REPLACEMENT OF HEALTH OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

## SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with the long-term care insurance policy being delivered and issued by [company name] Insurance Company. Your new policy gives you thirty (30) days to decide, without cost, whether you want to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, even though a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its insurance producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

**Historical Note**

New Appendix D renumbered from Appendix B and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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Appendix E. Long-Term Care Insurance Replacement and Lapse Reporting Form

**Long-term Care Insurance Replacement and Lapse Reporting Form**

For the State of \_\_\_\_\_  
 For the Reporting Year of \_\_\_\_\_

Company Name: \_\_\_\_\_ Due: June 30 annually  
 Company Address: \_\_\_\_\_ Company NAIC Number: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone Number: (\_\_\_\_) \_\_\_\_\_

**Instructions**

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Every insurer shall maintain the following records for each insurance producer: (1) the amount of long-term care insurance replacement sales as a percent of the insurance producer's total annual sales and (2) the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales. The tables below should be used to report the 10% of the insurer's insurance producers with the greatest percentages of replacements and lapses.

**Listing of the 10% of Insurance Producers with the Greatest Percentage of Replacements**

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Replaced By This Insurance Producer	Number of Replacements as % of Number of Policies Sold By This Insurance Producer

**Listing of the 10% of Insurance Producers with the Greatest Percentage of Lapses**

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Lapsed By This Insurance Producer	Number of Lapses As % of Number Sold By This Insurance Producer

**Company Totals**

Percentage of Replacement Policies Sold to Total Annual Sales \_\_\_\_\_%  
 Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year) \_\_\_\_\_%  
 Percentage of Lapsed Policies to Total Annual Sales \_\_\_\_\_%  
 Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) \_\_\_\_\_%

**Historical Note**

New Appendix E made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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Appendix F. Long-term Care Insurance Claims Denial Reporting Form

**Long-term Care Insurance  
Claims Denial Reporting Form**

For the State of \_\_\_\_\_  
For the Reporting Year of \_\_\_\_\_

Company Name: \_\_\_\_\_ Due: June 30 annually  
Company Address: \_\_\_\_\_

Company NAIC Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Line of Business: Individual Group

**Instructions**

The purpose of this form is to report all long-term care claim denials under in-force long-term care insurance policies. Indicate the manner of reporting by checking one of the boxes below:

- Per Claimant - counts each individual who makes one or a series of claim requests
- Per Transaction - counts each claim payment request

“Denied” means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition. It does not include a request for payment that is in excess of the applicable contractual limits.

Inforce Data

	State Data	Nationwide Data <sup>1</sup>
Total Number of Inforce Policies [Certificates] as of December 31st		

Claims & Denial Data

	State Data	Nationwide Data <sup>1</sup>
1 Total Number of Long-Term Care Claims Reported		
2 Total Number of Long-Term Care Claims Denied/Not Paid		
3 Number of Claims Not Paid due to Preexisting Condition Exclusion		
4 Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5 Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6 Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7 Number of Long-Term Care Claim Denied due to:		
8 • Long-Term Care Services Not Covered under the Policy <sup>2</sup>		
9 • Provider/Facility Not Qualified under the Policy <sup>3</sup>		
10 • Benefit Eligibility Criteria Not Met <sup>4</sup>		
11 • Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

**Historical Note**

New Appendix F made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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Appendix G. Rescission Reporting Form for Long-term Policies

RESCISSION REPORTING FORM FOR LONG-TERM CARE POLICIES

FOR THE STATE OF \_\_\_\_\_ FOR THE REPORTING YEAR \_\_\_\_\_

Company Name \_\_\_\_\_ Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Table with 6 columns: Policy Form #, Policy and Certificate #, Name of Insured, Date of Policy Issuance, Date/s Claim/s Submitted, Date of Rescission

Detailed reason for rescission:

Horizontal lines for providing detailed reason for rescission.

Signature

Name and Title (please type)

Date

Historical Note

New Appendix G made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

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## Appendix H. Things You Should Know Before You Buy Long-term Care Insurance

**Things You Should Know Before You Buy  
Long-term Care Insurance**

**Long-Term  
Care  
Insurance**

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

- **[WARNING! You should *not* buy this insurance policy unless you can afford to pay the premiums every year. You are making a multi-year financial commitment.]** [Remember that the company can increase premiums in the future.]

**(Drafting Instruction:** For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.)

- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

**Medicare**

- Medicare does **not** pay for most long-term care.

**Medicaid**

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

**Shopper's  
Guide**

- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

**Counseling**

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

**Facilities**

- Some long-term care insurance contracts provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move into a different state from where they purchased their long-term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments, and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

**Historical Note**

New Appendix H made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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Appendix I. Long-term Care Insurance Suitability Letter

Long-term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

**(Drafting Instruction:** Choose the paragraph that applies.)

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

*Please check one box and return in the enclosed envelope.*

- Yes**, [although my worksheet indicates that long-term care insurance may not be a suitable purchase.] I wish to purchase this coverage. Please resume review of my application.

**Drafting Instruction:** Delete the phrase in brackets if the applicant did not answer the questions about income.

- No**. I have decided not to buy a policy at this time.

\_\_\_\_\_  
APPLICANT'S SIGNATURE

\_\_\_\_\_  
DATE

*Please return to [issuer] at [address] by [date].*

**Historical Note**

New Appendix I made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

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## Appendix J. Long-term Care Insurance Outline of Coverage

[COMPANY NAME]  
 [ADDRESS - CITY & STATE]  
 [TELEPHONE NUMBER]  
 LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE  
 [Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. FEDERAL TAX CONSEQUENCES  
 This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED
  - (a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:
    - (1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.
    - (2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.
  - (b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]
  - (c) [Describe waiver of premium provisions or state that there are not such provisions;]
5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.  
 [In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]
6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
  - (a) [Provide a brief description of the right to return - "free look" provision of the policy.]
  - (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]
7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.
  - (a) [For insurance producers] Neither [insert company name] nor its [agents or insurance producers] represent Medicare, the federal government or any state government.
  - (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.
8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute-care unit of a hospital, such as in a nursing home, in the community or in the home.  
 This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]
9. BENEFITS PROVIDED BY THIS POLICY.
  - (a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]
  - (b) [Institutional benefits, by skill level.]
  - (c) [Non-institutional benefits, by skill level.]
  - (d) Eligibility for Payment of Benefits  
 [Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined

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and described as part of the outline of coverage.]

[Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

## 10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities and providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

## 11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

## 12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

## 13. PREMIUM.

- [(a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

## 14. ADDITIONAL FEATURES.

- [(a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

## 15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

**Historical Note**

New Appendix J renumbered from Appendix C and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE****R20-6-1101. Incorporation by Reference and Modifications**

**A.** The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, August 2016 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and available from the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197.

**B.** The Model Regulation is modified as follows:

1. In addition to the terms defined in the Model Regulation, the following definitions apply:
  - a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
  - b. "Commissioner" means the Director of the Arizona Department of Insurance.
  - c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
  - d. "Regulation" means Article.
2. Section 3(A)(2) reads:
  - (2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state including association plans.
3. Section 8(A)(7)(c) reads:

c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

4. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1,

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2010 remain subject to the requirements of A.R.S. § 20-1133.

5. Section 8.1(A)(7)(c) is revised to read as follows:  
Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.
6. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:  
The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.
7. Section 9.2 is revised to insert the citation to A.R.S. § 20-1133 as follows:  
The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of A.R.S. § 20-1133.
8. Section 15(G) is revised as follows:  
An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.
9. Section 23 is revised as follows:
  - A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
  - B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions,

waiting periods, elimination periods and probationary periods.

**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1101 recodified from R4-14-1101 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 15 A.A.R. 996, effective June 2, 2009 (Supp. 09-2). Amended by final rulemaking at 25 A.A.R. 1923, effective September 8, 2019 (Supp. 19-3).

**R20-6-1102. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1102 recodified from R4-14-1102 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1102.01 Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1103. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1103 recodified from R4-14-1103 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1104. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for

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only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1104 recodified from R4-14-1104 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1105. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1105 recodified from R4-14-1105 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1106. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1106 recodified from R4-14-1106 (Supp. 95-1). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1107. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1107 recodified from R4-14-1107 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1108. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1108 recodified from R4-14-1108 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1109. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991,

pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1109 recodified from R4-14-1109 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1110. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1110 recodified from R4-14-1110 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1111. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1111 recodified from R4-14-1111 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1112. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1112 recodified from R4-14-1112 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1113. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1113 recodified from R4-14-1113 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1114. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991,

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pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1114 recodified from R4-14-1114 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1115. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1115 recodified from R4-14-1115 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1116. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1116 recodified from R4-14-1116 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1117. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1117 recodified from R4-14-1117 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1118. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1118 recodified from R4-14-1118 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1119. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1119 recodified from R4-14-1119 (Supp. 95-1). Section repealed by final rulemaking

at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1120. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1120 recodified from R4-14-1120 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1121. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix A. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and correction made to heading of form on last page of Appendix A effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix A repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix B. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and corrections made to Plan C (Medicare (Part B) - Medical Services - Per Calendar Year) and Plan J (Other Benefits) effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Appendix B repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix C. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix C repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005

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(Supp. 05-3).

**Appendix D. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix D repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix E. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix E repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix F. Repealed****Historical Note**

Appendix F adopted effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Appendix F repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**ARTICLE 12. HIV/AIDS: PROHIBITED AND REQUIRED PRACTICES****R20-6-1201. Definitions**

- A. "AIDS" means Acquired Immune Deficiency Syndrome.
- B. "Applicant" means an applicant for a life or disability insurance policy or coverage under a health care plan, as well as any potential certificate holder or dependent covered under such policy or plan.
- C. "Insurer" means life and disability insurers (including but not limited to health insurers), hospital and medical service corporations, and health care services organizations, including all employees, contractors, and agents thereof.
- D. "Person" means any individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or entity.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1201 recodified from R4-14-1201 (Supp. 95-1).

**R20-6-1202. Applications for Insurance**

- A. Insurers shall not use questions on applications for life or disability policies or health care plans that inquire directly or indirectly about:
  - 1. The sexual orientation of an applicant;
  - 2. An applicant's receipt of transfusions of blood or blood products; or
  - 3. Whether or not the applicant has had any HIV-related test, except as provided in subsection (B) of this rule.
- B. Insurers may include specific questions on applications for life or disability insurance policies or health care plans asking if the applicant has ever been diagnosed or treated for AIDS or AIDS-related conditions or tested positive for the presence of

HIV antibodies, antigens, or the virus. No adverse underwriting decision shall be made on the basis of any prior positive HIV-related test or tests unless the insurer has verified that the prior test(s) consisted of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturer's directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1202 recodified from R4-14-1202 (Supp. 95-1).

**R20-6-1203. Testing for HIV; Consent Form**

- A. An insurer may test for HIV infection in the same way that the insurer tests for other conditions that affect mortality and morbidity. No adverse underwriting decision shall be made on the basis of a positive result to an HIV-related test unless the result consists of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturers' directions for use, including but not limited to the manufacturers' specified interpretation of positivity.
- B. If an applicant is requested to take an HIV-related test in connection with an application for a life or disability insurance policy or a health care plan, the insurer shall reveal the use of such test to the applicant and shall obtain the written consent of the applicant prior to the administration of such test. The insurer shall allow the applicant up to 10 days within which to decide whether or not to sign the consent form, and no adverse underwriting decision may be made on the basis of the applicant's delay during this time period. Insurers need not provide pretest counseling to applicants but shall advise applicants of the availability of counseling in accordance with subsection (C) of this rule.
- C. The written consent form, which shall be approved by the Director in advance of its use, shall contain the following information:
  - 1. Purpose of the consent form. The form shall contain a clear disclosure that the test to be performed is a test for the presence of HIV antibodies, antigens, or the virus, and that underwriting decisions will be based on the results of such test. The form shall further provide notice of a period of not less than 10 days during which the applicant may decide whether or not to sign the form, along with a disclosure that the applicant's refusal to be tested may be used as a reason to deny coverage.
  - 2. Information on HIV. The form shall provide clear, concise, and accurate information on how the disease is spread and what behavior places persons at risk of contracting the virus.
  - 3. Pretest counseling considerations. The written consent form shall contain information advising the applicant that counseling is recommended by many public health organizations and that the applicant may obtain such counseling at the applicant's own expense. The form shall contain current information as provided by the Department regarding the availability in Arizona of free confidential or anonymous counseling through county health departments and through other governmental or government-funded agencies.
  - 4. Disclosure of test results. The form shall advise the applicant that all test results shall be treated confidentially and

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that results shall be released only to the applicant and the named insurer or upon the applicant's written consent or as otherwise required or allowed by law, including but not limited to the release of information to the Department of Health Services as provided by law.

5. Meaning of positive test results. The form shall advise the applicant of the type of test (including but not limited to antibody, antigen, or viral culture) to be used, and that a positive test result indicates that the applicant has been infected with HIV but does not necessarily have AIDS. The form shall explain that a positive test result will adversely affect the application for insurance.
6. Consent. The consent form shall contain an attestation to be signed by the applicant or, if the applicant lacks legal capacity to consent, a person authorized pursuant to law to consent on behalf of the applicant, that he or she has read and understands the written consent form and voluntarily consents to the performance of a test for HIV and to the disclosure of the test results as described in the consent form. The applicant or the applicant's legal representative shall have the right to request and receive a copy of the written consent form. A photocopy of the form shall be as valid as the original.
7. Optional release of information to personal physician. In addition to the release of information to the insurer provided in the consent form, the applicant may, at the applicant's option, consent to the release of information to the applicant's personal physician. The form shall provide for such release to be separately signed and dated by the applicant, or if the applicant lacks legal capacity to consent, by a person authorized pursuant to law to consent on behalf of the applicant.
8. Time period during which release of information is effective. The consent form shall specify the time period during which any and all release provisions of the consent form shall be effective, but in no case shall such time period exceed 180 days from the date the consent form is signed by the applicant or the applicant's legal representative. No HIV-related information shall be released to any person after the expiration of that time period unless the insurer obtains the express written consent, pursuant to R20-6-1204, of the applicant or, if the applicant lacks legal capacity to consent, by a person authorized by law to consent on behalf of the applicant.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1203 recodified from R4-14-1203 (Supp. 95-1).

**R20-6-1204. Release of Confidential HIV-related Information; Release Form**

- A. Except as required by law or authorized pursuant to a written consent to be tested, an insurer shall not disclose confidential HIV-related information to any person unless a written release form is executed by the applicant or, if the applicant lacks legal capacity to consent to such release, by a person authorized by law to consent to the release of information on behalf of the applicant. The applicant or the applicant's legal representative shall be entitled to receive a copy of the release. A photocopy shall be as valid as the original.
- B. Such written release form shall contain the following information:
  1. The name and address of the person to whom the information shall be disclosed;
  2. The specific purpose for which disclosure is to be made; and

3. The time period during which the written release is to be effective but in no case shall such time period exceed 180 days from the date the release is signed by the applicant or the applicant's legal representative;
4. The signature of the applicant or of the person authorized by law to consent to such release, and the date the release form was signed.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1204 recodified from R4-14-1204 (Supp. 95-1).

**R20-6-1205. Benefits; Prohibited Practices**

- A. Life and disability insurance policies or health care plans that provide benefits for prescription drugs shall provide benefits for any and all drugs and pharmaceutical forms of treatment for HIV and/or AIDS approved by the Food and Drug Administration pursuant to 21 U.S.C. Chapter 9 or licensed by the Food and Drug Administration pursuant to 42 U.S.C. Chapter 6A, including but not limited to Zidovudine, formerly Azidothymidine ("AZT"), Didanosine (ddI) and Zalcitabine (ddC), to the same extent as other prescription drugs and treatments.
- B. Insurers shall provide benefits for HIV, AIDS, and AIDS-related conditions in the same manner and to the same extent as those benefits provided for all other diseases.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1205 recodified from R4-14-1205 (Supp. 95-1).

**ARTICLE 13. RESERVED****ARTICLE 14. INSURANCE HOLDING COMPANY****R20-6-1401. Definitions**

- A. "The Act" means the Insurance Holding Company Systems Act, A.R.S. §§ 20-481 through 20-481.32.
- B. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- C. "Ultimate controlling person" means that person which is not controlled by any other person.
- D. Unless the context otherwise requires, other terms found in these regulations and in A.R.S. § 20-481 are used as defined in the Act. Other nomenclature or terminology is according to Title 20, A.R.S. or industry usage if not defined by Title 20, A.R.S.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1401 recodified from R4-14-1401 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1402. Acquisition of Control – Statement Filing**

- A. A person required to file a statement pursuant to A.R.S. § 20-481.02 shall furnish the required information on Form A, attached hereto as Appendix A and on Form E, attached hereto as Appendix E, and described in subsections (D) and (E) of this section.
- B. The applicant shall promptly advise the Director of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Director's disposition of the application.
- C. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of A.R.S. § 20-481.02(G), the name of the domestic insurer on the cover page should be indicated as follows: "[ABC Insurance Company), a

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subsidiary of [XYZ Holding Company].” Where a A.R.S. § 20-481.02(G) insurer is being acquired, references to “the insurer” contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

- D. If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to A.R.S. § 20-481.02(A), that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to A.R.S. § 20-481.25(C).
- E. Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to A.R.S. § 20-481.25, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of A.R.S. § 20-481.25 as set forth in A.R.S. § 20-481.25(B).
- F. In addition to the information required by Form E, the Director may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1402 recodified from R4-14-1402 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1403. Annual Registration of Insurers – Statement Filing**

- A. An insurer required to file an annual registration statement pursuant to A.R.S. § 20-481.09 shall furnish the required information on Form B, attached hereto as Appendix B, in accordance with the instructions contained in Appendix G.
- B. Amendments to Form B shall be filed in the Form B format with only those items which are being amended reported. Each such amendment shall include at the top of the cover page “Amendment No. (insert number) to Form B for (insert year)” and shall indicate the date of the amendment and not the date of the original filings.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1403 recodified from R4-14-1403 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1404. Summary of Registration – Statement Filing**

An insurer required to file an annual registration statement pursuant to A.R.S. § 20-481.09 is also required to furnish information required on Form C, attached hereto as Appendix C.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1404 recodified from R4-14-1404 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1405. Alternative and Consolidated Registrations**

- A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under A.R.S. § 20-481.09. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:
  1. The statement or report contains substantially similar information required to be furnished on Form B; and
  2. The filing insurer is the principal insurance company in the insurance holding company system.

- B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer’s claim that it, in fact, is the principal insurer in the insurance holding company system.
- C. With the prior approval of the Director, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection (A) above.
- D. Any insurer may take advantage of the provisions of A.R.S. §§ 20-481.15 or 20-481.16 without obtaining the prior approval of the Director. The Director, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1405 recodified from R4-14-1405 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1406. Disclaimers and Termination of Registration**

- A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person, hereinafter referred to in this rule as the “subject,” shall contain the following information:
  1. The number of authorized, issued and outstanding voting securities of the subject;
  2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject’s voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
  3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
  4. A statement explaining why the person should not be considered to control the subject.
- B. A request for termination of registration shall be deemed to have been granted unless the director, within 30 days after receipt of the request, notifies the registrant otherwise.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1406 recodified from R4-14-1406 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1407. Transactions Subject to Prior Notice – Notice Filing**

- A. An insurer required to give notice of a proposed transaction pursuant to A.R.S. § 20-481.12 shall furnish the required information on Form D, attached hereto as Appendix D, in accordance with the instructions in Appendix G.
- B. Agreements for cost sharing services and management services shall at a minimum and as applicable:
  1. Identify the person providing services and the nature of such services;
  2. Set forth the methods to allocate costs;
  3. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
  4. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

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5. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
6. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
7. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
9. Include standards for termination of the agreement with and without cause;
10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
11. Specify that, if the insurer is placed in receivership or seized by the Director under the Arizona Receivership Act:
  - a. All of the rights of the insurer under the agreement extend to the receiver or Director; and,
  - b. All books and records will immediately be made available to the receiver or the Director, and shall be turned over to the receiver or Director immediately upon the receiver or Director's request;
12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the Arizona Receivership Act; and
13. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under the Arizona Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.
  - a. The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
  - b. Surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;
  - c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
  - d. If the insurer is not a life insurer, the net income, net realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
  - e. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.
5. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Director and the end of the month preceding the month in which the request for dividend approval is submitted; and
6. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

- B.** Subject to A.R.S. § 20-481.19, each registered insurer shall report to the Director all dividends and other distributions to shareholders within 5 business days following the declaration thereof and at least 10 business days before payment of the dividend or distribution, including the same information required by subsection (A)(4)(a) through (e) of this rule.

**Historical Note**

New Section made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4). Amended by final rulemaking at 23 A.A.R. 3311, effective January 16, 2018 (Supp. 17-4).

**R20-6-1408. Enterprise Risk Report**

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to A.R.S. § 481.10(D) shall furnish the required information on Form F, attached hereto as Appendix F.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1408 recodified from R4-14-1408 (Supp. 95-1). R20-6-1408 repealed; new Section R20-6-1408 made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1409. Extraordinary Dividends and Other Distributions**

- A.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
1. The amount of the proposed dividend;
  2. The date established for payment of the dividend;
  3. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
  4. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

**R20-6-1410. Adequacy of Surplus**

The factors set for in A.R.S. §§ 20-481.01(F) and 20-481.24 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Director instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Director will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Director will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

**Historical Note**

New Section made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

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Appendix A. Form A - Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

[Name of Domestic Insurer]

By

[Name of Acquiring Person (Applicant)]

Filed with the Arizona Department of Insurance

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

Four horizontal lines for providing contact information.

ITEM 1. METHOD OF ACQUISITION

[State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired. State the federal identification number and the NAIC number of the domestic insurer.]

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

- (a) State the name and address of the applicant seeking to acquire control over the insurer.
(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant, including NAIC numbers for all insurers. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.]

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

[On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual, or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

- (a) Name and business address;
(b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;
(c) Material occupations, positions, officer or employment during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on: if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;
(d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

Such persons may also submit fingerprints and the fingerprint processing fee in accordance with A.R.S. § 20-481.03(B).]

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

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- [(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.]
- [(b) Explain the criteria used in determining the nature and amount of such consideration.]
- [(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.)

**ITEM 5. FUTURE PLANS OF INSURER**

[Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.]

**ITEM 6. VOTING SECURITIES TO BE ACQUIRED**

[State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.]

**ITEM 7. OWNERSHIP OF VOTING SECURITIES**

[State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.]

**ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER**

[Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.]

**ITEM 9. RECENT PURCHASES OF VOTING SECURITIES**

[Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefore. State whether any such shares so purchased are hypothecated.]

**ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE**

[Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.)

**ITEM 11. AGREEMENTS WITH BROKER-DEALERS**

[Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.]

**ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS**

- [(a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.]
- [(b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. The statements may be prepared on either an individual basis, or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

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The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.]

- [(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Appendix G.)

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen (15) days after the end of the month in which the acquisition of control occurs.

ITEM 14. SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.02 \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_ (Name of Applicant) (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

CHAPTER 6. DEPARTMENT OF INSURANCE

Appendix B. Form B - Insurance Holding Company System Annual Registration Statement
INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Table with 2 columns: Name, Address. Includes three horizontal lines for data entry.

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

Three horizontal lines for providing contact information.

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

[Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the federal identification number and the NAIC number of each, the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.]

ITEM 2. ORGANIZATIONAL CHART

[Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., - corporation, trust, partnership) and the state or other jurisdiction of domicile.]

ITEM 3. THE ULTIMATE CONTROLLING PERSON

[As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name;
(b) Home office address;
(c) Principal executive office address;
(d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;
(e) The principal business of the person;
(f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and
(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.]

ITEM 4. BIOGRAPHICAL INFORMATION

[If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his

## CHAPTER 6. DEPARTMENT OF INSURANCE

or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations.]

**ITEM 5. TRANSACTIONS AND AGREEMENTS**

[Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;
- (e) All management agreements, service contracts and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and
- (i) Any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of A.R.S. § 20-481.09.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving 1/2 of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Director and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the Registrant.]

**ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

[A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.]

**ITEM 7.a. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS**

[The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.]

**ITEM 7.b. STATEMENT REGARDING CORPORATE GOVERNANCE AND INTERNAL CONTROLS**

[The insurer shall furnish a statement that the insurer's board of directors oversees corporate governance and internal controls of the insurer and that the insurer's officers or senior management have approved, implemented and maintain and monitor corporate governance and internal control procedures.]

**ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS**

- (a) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

CHAPTER 6. DEPARTMENT OF INSURANCE

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Director. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary State and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

- (c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Forms B and G.]

ITEM 9. FORM C REQUIRED

[A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.]

ITEM 10. SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant \_\_\_\_\_ has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CHAPTER 6. DEPARTMENT OF INSURANCE

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_ of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Name of Applicant)

(Title of Officer)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

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Appendix C. Form C - Summary of Registration Statement

SUMMARY OF CHANGES TO REGISTRATION STATEMENT

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_

[Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Director, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.]

SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant \_\_\_\_\_ has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

---

CHAPTER 6. DEPARTMENT OF INSURANCE

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_  
(Name of Applicant) (Title of Officer)  
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

CHAPTER 6. DEPARTMENT OF INSURANCE

Appendix D. Form D - Prior Notice of a Transaction

PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

[Furnish the following information for each of the parties to the transaction:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.;
- (e) A description of the nature of the parties' business operations;
- (f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;
- (g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.]

ITEM 2. DESCRIPTION OF THE TRANSACTION

[Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under A.R.S. § 20-481.12(B);
- (b) A statement of the nature of the transaction;
- (c) If a notice for amendments or modifications, the reasons for the change and the financial impact on the domestic insurer;
- (d) A statement of how the transaction meets the "fair and reasonable" standard of A.R.S. § 20-481.12(A)(1); and
- (e) The proposed effective date of the transaction.]

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

[Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

## CHAPTER 6. DEPARTMENT OF INSURANCE

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

**ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE**

[If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.]

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

**ITEM 5. REINSURANCE**

[If the transaction is a reinsurance agreement or modification thereto, as described by A.R.S. § 20-481.12(B)(3)(b), or a reinsurance pooling agreement or modification thereto as described by A.R.S. § 20-481.12(B)(3)(a), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.]

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.]

**ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS**

[For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed;
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.]

[For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement;
- (b) A description of the period of time during which the agreement is to be in effect;
- (c) A brief description of each party's expenses or costs covered by the agreement;
- (d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;]
- (e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
- (f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
- (g) A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.]

**ITEM 7. SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

**SIGNATURE**

Pursuant to the requirements of A.R.S. § 20-481.09, \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CHAPTER 6. DEPARTMENT OF INSURANCE

(SEAL)

By \_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_  
(Name of Applicant) (Title of Officer)

of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

CHAPTER 6. DEPARTMENT OF INSURANCE

Appendix E. Form E - Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-domiciliary Insurer Doing Business in this State or by a Domestic Insurer

PRE-ACQUISITION NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC INSURER

Name of Applicant

Name of Other Person Involved in Merger or Acquisition

Filed with the Arizona Department of Insurance

Dated: \_\_\_\_\_, 20\_\_\_\_\_

Name, title, address and telephone number of person completing this statement:

Blank lines for providing name, title, address, and telephone number.

ITEM 1. NAME AND ADDRESS

[State the name and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.]

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

[State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.]

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

[State the nature and purpose of the proposed merger or acquisition.]

ITEM 4. NATURE OF BUSINESS

[State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.]

ITEM 5. MARKET AND MARKET SHARE

[State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in A.R.S. § 20-481.25(D). If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.]

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). Appendix E. Instructions on Forms, renumbered to Appendix G; new Appendix E. Form E made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

CHAPTER 6. DEPARTMENT OF INSURANCE

Appendix F. Form F - Enterprise Risk Report

ENTERPRISE RISK REPORT

Filed with the Arizona Department of Insurance

Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name Address

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

ITEM 1. ENTERPRISE RISK

[The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in A.R.S. § 20-481(4), provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities with the insurance holding company system;

Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities;

Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system'

Business plan of the insurance holding company system and summarized strategies for next 12 months;

Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

Identification of insurance holding company system capital resources and material distribution patterns;

Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (include both the rating score and outlook);

Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

[The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.]

ITEM 2. OBLIGATION TO REPORT

[If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.]

Historical Note

Appendix F, Form F made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

## CHAPTER 6. DEPARTMENT OF INSURANCE

## Appendix G. Instructions on Forms A, B, C, D, E and F

**INSTRUCTIONS ON FORMS A, B, C, D, E AND F****FORMS - GENERAL REQUIREMENTS**

Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by A.R.S. §§ 20-481.02, 20-481.09, 20-481.12 and 20-481.25. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

One original paper statement excluding exhibits, and all other papers and documents shall be filed with the Director. The statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement. All paper filings shall be by personal delivery or mail addressed to: Arizona Department of Insurance, Financial Affairs Division.

In addition to the filed paper statement, a copy of the statement, including exhibits, and all other papers and documents filed as a part thereof, shall be filed electronically.

All filed documents shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

If an applicant requests a hearing on a consolidated basis under A.R.S. § 20-481.07, in addition to filing the Form A with the Director, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

**FORMS - INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS**

Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Director which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Director which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

**FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH**

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Director as a separate document:

- (1) Identifying the information, document or report in question;
- (2) Stating why the filing thereof at the time required is impractical; and
- (3) Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Director within 60 days after receipt thereof enters an order denying the request.

**FORMS - ADDITIONAL INFORMATION AND EXHIBITS**

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Director may request such further information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the forms. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

## CHAPTER 6. DEPARTMENT OF INSURANCE

**Historical Note**

Appendix G. *Instructions on Forms*, renumbered from Appendix E. *Instructions on Forms*, with heading amended to include new Appendix F, by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**ARTICLE 15. RESERVED****ARTICLE 16. CREDIT FOR REINSURANCE****R20-6-1601. Credit for Reinsurance – Reinsurer Licensed in Arizona**

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

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1601 recodified from R4-14-1601 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1602. Credit for Reinsurance – Accredited Reinsurers**

- A. Pursuant to A.R.S. § 20-261.05(C), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Arizona as of the date on which statutory financial statement credit for reinsurance is claimed.
- B. An accredited reinsurer must:
  1. File a properly executed Form AR-1, attached as Appendix A to this Article, as evidence of its submission to the Director's jurisdiction and to the Director's authority to examine its books and records;
  2. File with the Director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
  3. File annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
  4. Maintain a surplus as regards policyholders in an amount not less than \$20 million, or obtain the affirmative approval of the Director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
- C. If the Director determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Director may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this Section if the assuming insurer's accreditation has been revoked by the Director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Director.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1602 recodified from R4-14-1602 (Supp. 95-1). R20-6-1602 renumbered to R20-6-1607; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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

- A. Pursuant to A.R.S. § 20-261.05(D), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial credit for reinsurance is claimed:
  1. Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under A.R.S. §§ 20-261.01 through 20-261.08 and this Article;
  2. Maintains a surplus as regards policyholders in an amount not less than \$20 million; and
  3. Files a properly executed Form AR-1 (Exhibit A) with the Director as evidence of the submission to the Director's authority to examine its books and records.
- B. The provisions of this Section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this Section, "substantially similar" standards means credit for reinsurance standards that the Director determines equal or exceed the standards of A.R.S. §§ 20-261.01 through 20-261.08 and this Article.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1603 recodified from R4-14-1603 (Supp. 95-1). R20-6-1603 renumbered to R20-6-1608; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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

- A. Pursuant to A.R.S. § 20-261.05(E), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in A.R.S. § 20-261.03, for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund.
- B. The following requirements apply to the following categories of assuming insurer:
  1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million, except as provided in subsection (B)(2) of this Section.
  2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of

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- U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities, attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.
3. The trust fund for a group including incorporated and individual unincorporated underwriters:
    - a. Shall consist of:
      - i. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;
      - ii. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this Article, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
      - iii. In addition to these trusts, the group shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.
    - b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Director:
      - i. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
      - ii. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.
  4. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10 billion (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:
    - a. Consist of funds in trust in an amount no less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
    - b. Maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and
    - c. File a properly executed Form AR-1 (Exhibit A) as evidence of the submission to the Director's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.
    - d. Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.
  - C. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.
    1. The trust instrument shall provide that:
      - a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
      - b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;
      - c. The trust shall be subject to examination as determined by the commissioner;
      - d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
      - e. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.
    2. Notwithstanding any other provisions in the trust instrument:
      - a. If the trust fund is inadequate because it contains an amount less than the amount required by this Section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
      - b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with

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- the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
- c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
  - d. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.
- D.** For purposes of this Section, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:
1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:
    - a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
    - b. Reserves for losses reported and outstanding;
    - c. Reserves for losses incurred but not reported;
    - d. Reserves for allocated loss expenses; and
    - e. Unearned premiums.
  2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:
    - a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
    - b. Aggregate reserves for accident and health policies;
    - c. Deposit funds and other liabilities without life or disability contingencies; and
    - d. Liabilities for policy and contract claims.
- E.** Assets deposited in trusts established pursuant to A.R.S. § 20-261.05 and this Section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in A.R.S. § 20-261.03, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution as defined in A.R.S. § 20-261.03, and investments of the type specified in this subsection (E), but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subsections (E)(1)(c), (E)(3), (E)(6)(b) or (E)(7) of this Section, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of A.R.S. § 261.05 shall be invested only as follows:
1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:
    - a. The United States or by any agency or instrumentality of the United States;
    - b. A state of the United States;
    - c. A territory, possession or other governmental unit of the United States;
  - d. An agency or instrumentality of a governmental unit referred to in subsections (E)(1)(b) and (E)(1)(c) of this Section if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection (E)(1)(d) if payable solely out of special assessments on properties benefited by local improvements; or
  - e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:
    - a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
    - b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in Arizona and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
    - c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;
  3. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
  4. An investment made pursuant to the provisions of subsections (E)(1), (E)(2) or (E)(3) of this Section shall be subject to the following additional limitations:
    - a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5% of the assets of the trust;
    - b. An investment in any one mortgage-related security shall not exceed 5% of the assets of the trust;
    - c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and
    - d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution’s obligations are eligible as investments under subsections (E)(2)(a) and (E)(2)(c) of this Section, but shall not exceed 2% of the assets of the trust.

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5. As used in this Section:
  - a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
    - i. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that: (1) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and (2) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1703; or
    - ii. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (E)(5)(a)(i) of this Section;
  - b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.
6. Equity interests.
  - a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
    - i. Its obligations and preferred shares, if any, are eligible as investments under this Section; and
    - ii. The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. 78a - 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this Section an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;
  - b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:
    - i. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and
    - ii. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;
  - c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection (E)(6), when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection (E)(6), shall not exceed 10% of the assets in the trust;
7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.
8. Investment companies
  - a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. 80a, are permissible investments if the investment company:
    - i. Invests at least 90% of its assets in the types of securities that qualify as an investment under subsection (E)(1), (E)(2) or (E)(3) of this Section or invests in securities that are determined by the Director to be substantively similar to the types of securities set forth in subsection (E)(1), (E)(2) or (E)(3) of this Section; or
    - ii. Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subsection (E)(6)(a) of this Section;
  - b. Investments made by a trust in investment companies under this subsection (E)(8) shall not exceed the following limitations:
    - i. An investment in an investment company qualifying under subsection (E)(8)(a)(i) of this Section shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust, and
    - ii. Investments in an investment company qualifying under subsection (E)(8)(a)(ii) of this Section shall not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subsection (E)(6)(a) of this Section.
9. Letters of Credit
  - a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for

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the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

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

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

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1604 recodified from R4-14-1604 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4). R20-6-1604 renumbered to R20-6-1609; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1605. Credit for Reinsurance – Certified Reinsurers**

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

- |              |                   |
|--------------|-------------------|
| 1. Ratings   | Security Required |
| Secure-1     | 0%                |
| Secure-2     | 10%               |
| Secure-3     | 20%               |
| Secure-4     | 50%               |
| Secure-5     | 75%               |
| Vulnerable-6 | 100%              |
2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
3. The Director shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.
4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Director. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
- Line 1: Fire
  - Line 2: Allied Lines
  - Line 3: Farmowners multiple peril

- Line 4: Homeowners multiple peril
- Line 5: Commercial multiple peril
- Line 9: Inland Marine
- Line 12: Earthquake
- Line 21: Auto physical damage

5. Credit for reinsurance under this Section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this Section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this Section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

**B. Certification Procedure**

- The Director shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Director may not take final action on the application until at least thirty days after posting the notice required by this subsection (B)(1).
- The Director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection A of this Section. The Director shall publish a list of all certified reinsurers and their ratings.
- In order to be eligible for certification, the assuming insurer shall meet the following requirements:
  - The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Director pursuant to subsection C of this Section.
  - The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250 million calculated in accordance with subsection (B)(4)(h) of this Section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250 million and a central fund containing a balance of at least \$250 million.
  - The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
    - Standard & Poor's;
    - Moody's Investors Service;
    - Fitch Ratings;
    - A.M. Best Company; or

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- v. Any other Nationally Recognized Statistical Rating Organization.
- d. The certified reinsurer must comply with any other requirements reasonably imposed by the Director.
- 4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:
  - a. The certified reinsurer’s financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

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

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

- f. including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- f. Regulatory actions against the certified reinsurer;
- g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(4)(h) below;
- h. For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Director will consider audited financial statements for the last three years filed with its non-U.S. jurisdiction supervisor;
- i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer’s domiciliary jurisdiction in the context of an insolvency proceeding;
- j. A certified reinsurer’s participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
- k. Any other information deemed relevant by the Director.
- 5. Based on the analysis conducted under subsection (B)(4)(e) of this Section of a certified reinsurer’s reputation for prompt payment of claims, the Director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subsection (B)(4)(a) of this Section if the Director finds that:
  - a. more than 15% of the certified reinsurer’s ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed \$100 thousand for each cedent; or
  - b. the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds \$50 million.
- 6. The assuming insurer must submit a properly executed Form CR-1 (attached as Exhibit B) as evidence of its submission to the jurisdiction of Arizona, appointment of the Director as an agent for service of process in Arizona, and agreement to provide security for 100% of the assuming insurer’s liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Director shall not certify any assuming insurer that is domiciled in a jurisdiction that the Director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
- 7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Director, both with respect to an initial application for certification and on an ongoing basis. All information

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submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under A.R.S. § 20-158 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

- a. Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
  - b. Annually, Form CR-F or CR-S, as applicable;
  - c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(7)(d) below;
  - d. Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;
  - e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
  - f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
  - g. Any other information that the Director may reasonably require.
8. Change in Rating or Revocation of Certification.
- a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (B)(4)(a) of this Section.
  - b. The Director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this Section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
  - c. If the rating of a certified reinsurer is upgraded by the Director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Director, the Director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
  - d. Upon revocation of the certification of a certified reinsurer by the Director, the assuming insurer shall

be required to post security in accordance with Section R20-6-1607 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section R20-6-1604, the Director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Director to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

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

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promptly enforce final U.S. judgments or arbitration awards.

- h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
  - i. Any other matters deemed relevant by the Director.
3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Director shall consider this list in determining qualified jurisdictions. If the Director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Director shall provide thoroughly documented justification with respect to the criteria provided under subsections (C)(2)(a) through (i) of this Section.
  4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.
- D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.**
1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 (Exhibit B) and such additional information as the Director requires. The assuming insurer shall be considered to be a certified reinsurer in Arizona.
  2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in Arizona as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Director of any change in its status or rating within ten days after receiving notice of the change.
  3. The Director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (B)(8) of this Section.
  4. The Director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Director suspends or revokes the certified reinsurer's certification in accordance with subsection (B)(8) of this Section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in Arizona.
- E. Mandatory Funding Clause.** In addition to the clauses required under Section R20-6-1611, reinsurance contracts entered into or renewed under this Section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this Section for reinsurance ceded to the certified reinsurer.
- F.** The Director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1605 recodified from R4-14-1605 (Supp. 95-1). R20-6-1605 renumbered to R20-6-1610; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3,

effective November 30, 2015 (Supp. 15-4).

**R20-6-1606. Credit for Reinsurance Required by Law**

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

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1606 recodified from R4-14-1606 (Supp. 95-1). R20-6-1606 renumbered to R20-6-1611; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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

- A.** Pursuant to A.R.S. § 20-261.06, the Director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. § 20-261.05 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in A.R.S. § 20-261.03. This security may be in the form of any of the following:
1. Cash;
  2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
  3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in A.R.S. § 20-261.03, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or
  4. Any other form of security acceptable to the Director.
- B.** An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this Section shall be allowed only when the requirements of Section R20-6-1611 and the applicable portions of Sections R20-6-1608, R20-6-1609 or R20-6-1610 have been satisfied.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1607 recodified from R4-14-1607 (Supp. 95-1). Section R20-6-1607 renumbered to R20-6-1612; new Section R20-6-1607 renumbered from R20-6-1602 and amended

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by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1608. Trust Agreements Qualified under Section R20-6-1607**

**A.** As used in this Section:

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

**B.** Required conditions.

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

beneficiary and deliver physical custody of the assets to the beneficiary; and

- f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
7. The trust agreement shall provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.
8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.
9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.
11. Notwithstanding other provisions of this Section, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
  - a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
  - b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
  - c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in A.R.S. § 20-261.03 apart from its general assets, in trust for such uses and purposes specified in subsections (11)(a) and (b) above as may remain executory after such

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withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this Section, when a trust agreement is established to meet the requirements of Section R20-6-1607 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- a. To pay or reimburse the ceding insurer for:
  - i. The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
  - ii. The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provision of the policies reinsured under the reinsurance agreement.
- b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer, or
- c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in subsections (12)(a) and (b) above as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this subsection must be included in the reinsurance agreement.

**C. Permitted conditions**

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the

beneficiary of a written notice of removal, effective not less than ninety days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
  3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subsection (D)(1)(b) of this Section.
  4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
  5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.
- D. Additional conditions applicable to reinsurance agreements:**
1. A reinsurance agreement may contain provisions that:
    - a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
    - b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
    - c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
    - d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

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- i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; and
  - ii. To pay or reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
  - iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding reinsurer; or
  - iv. To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
2. The reinsurance agreement also may contain provisions that:
    - a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
      - i. The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
      - ii. After withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.
    - b. Provide for the return of any amount withdrawn in excess of the actual amounts required for subsection (D)(1)(d) of this Section, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;
    - c. Permit the award by any arbitration panel or court of competent jurisdiction of:
      - i. Interest at a rate different from that provided in subsection (D)(2)(b) of this Section;
      - ii. Court or arbitration costs;
      - iii. Attorney's fees; and
      - iv. Any other reasonable expenses.
- E. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Director in compliance with the provisions of this Article when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
  - F. Existing agreements. Notwithstanding the effective date of this Article, any trust agreement or underlying reinsurance agreement in existence and approved by the Director prior to the effective date of this Article will continue to be acceptable until December 31, 2016, at which time the agreements will have to fully comply with this Section for the trust agreement to be acceptable.
- G. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (A)(1) of this Section shall not be construed to affect any actions or rights that the Director may take or possess pursuant to the provisions of the laws of Arizona.

**Historical Note**

New Section R20-6-1608 renumbered from R20-6-1603 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1609. Letters of Credit Qualified under Section R20-6-1607.**

- A. The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined A.R.S. § 20-261.03. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (H)(1) of this Section. As used in this Section, "beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).
- B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.
- C. A letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
- D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for no less than thirty days' notice prior to expiration date or nonrenewal.
- E. The letter of credit shall state whether it is subject to and governed by the laws of Arizona or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), This incorporation by reference contains no future additions or amendments. All drafts of letters of credit drawn according to UCP 600 or ISP98 shall be presentable at an office in the United States of a qualified United States financial institution.
- F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP 600 occur.

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- G.** If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection A of this Section, then the following additional requirements shall be met:
1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
  2. The “evergreen clause” shall provide for thirty days notice prior to expiration date or nonrenewal.
- H.** Reinsurance agreement provisions.
1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
    - a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;
    - b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
      - i. To pay or reimburse the ceding insurer for the assuming insurer’s share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
      - ii. To pay or reimburse the ceding insurer for the assuming insurer’s share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
      - iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
      - iv. Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer’s entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer’s share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsections (H)(1)(b)(i), (ii) and (iii) of this Section as may remain after withdrawal and for any period after the termination date.
    - c. All of the provisions of subsections (H)(1)(a) and (b) of this Section shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
  2. Nothing contained in subsection (H)(1) of this Section shall preclude the ceding insurer and assuming insurer from providing for:
    - a. An interest payment, at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (H)(1)(b) of this Section; or
    - b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

**Historical Note**

New Section R20-6-1609 renumbered from R20-6-1604 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1610. Other Security**

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

**Historical Note**

New Section R20-6-1610 renumbered from R20-6-1605 by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1611. Reinsurance Contract**

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

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to A.R.S. § 20-261(C);
2. Includes a provision pursuant to A.R.S. § 20-261.05 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and
3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**Historical Note**

New Section R20-6-1611 renumbered from R20-6-1606 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-6012. Contracts Affected**

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

**Historical Note**

New Section R20-6-1612 renumbered from R20-6-1607 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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

FORM AR-1, CERTIFICATE OF ASSUMING INSURER

I, \_\_\_\_\_, \_\_\_\_\_,  
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

\_\_\_\_\_, hereby certify that  
(name of state)

\_\_\_\_\_, ("Assuming Insurer");  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in  
\_\_\_\_\_  
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

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

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

4. Submits with this form a current list of insurers domiciled in \_\_\_\_\_ reinsured by Assuming Insurer and  
(ceding insurer's state of domicile)

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
(name of assuming insurer)  
BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). Exhibit A amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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Exhibit B. Form CR-1, Certificate of Certified Reinsurer

FORM CR-1, CERTIFICATE OF CERTIFIED REINSURER

I, \_\_\_\_\_,
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer under
(name of assuming insurer)

a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_
(name of state)

in order to be considered for approval in this state, hereby certify that
(name of assuming insurer) ("Assuming Insurer"):

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_ for the adjudication of any issue arising out of the (ceding insurer's state of domicile) reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_ (ceding insurer's state of domicile) as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with this Article.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with this Article.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: \_\_\_\_\_ (name of assuming insurer)

\_\_\_\_\_ (name of officer)

\_\_\_\_\_ (title of officer)

Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). Exhibit B repealed; new Exhibit B made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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**Exhibit C. Form CR-F Instructions****Form CR-F Instructions****Part 1 - Assumed Reinsurance as of December 31, Current Year (000 Omitted)**

Create a spreadsheet with the following columns (total each column 5 through 15):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Name of Reinsured
4. Domiciliary Jurisdiction
5. Assumed Premium
6. Reinsurance on Paid Losses and Loss Adjustment Expenses
7. Reinsurance on Known Case Losses and LAE
8. Cols. 6 + 7
9. Contingent Commissions Payable
10. Assumed Premium Receivable
11. Unearned Premium
12. Funds Held By or Deposited With Reinsured Companies
13. Letters of Credit Posted
14. Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit
15. Amount of Assets Pledged or Collateral Held in Trust

Each row shall list each insurer for which reinsurance is assumed for the calendar year.

**Part 2 - Ceded Reinsurance as of December 31, Current Year (000 Omitted)**

Create a spreadsheet with the following columns (total each column 6 through 19):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Name of Reinsurer
4. Domiciliary Jurisdiction
5. Reinsurance Contracts Ceding 75% or More of Direct Premiums Written
6. Reinsurance Premiums Ceded
7. Reinsurance Recoverable on Paid Losses
8. Reinsurance Recoverable on Paid LAE
9. Reinsurance Recoverable on Known Case Loss Reserves
10. Reinsurance Recoverable on Known Case LAE Reserves
11. Reinsurance Recoverable on IBNR Loss Reserves
12. Reinsurance Recoverable on IBNR LAE Reserves
13. Reinsurance Recoverable on Unearned Premiums
14. Reinsurance Recoverable on Contingent Commissions
15. Cols. 7 through 14 Totals
16. Reinsurance Payable Ceded Balances Payable
17. Reinsurance Payable Other Amounts Due to Reinsurers
18. Net Amount Recoverable From Reinsurers, Cols. 15 – [16 + 17]
19. Funds Held by Company Under Reinsurance Treaties

Each row shall list each insurer to whom reinsurance was ceded for the calendar year.

**Historical Note**

Exhibit C made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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**Exhibit D. Form CR-S Instructions****Form CR-S Instructions**

**Part 1 – Section 1.** Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 7 through 12):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Reinsured
5. Location
6. Type of Reinsurance Assumed
7. Amount of In Force at End of Year
8. Reserve
9. Premiums
10. Reinsurance Payable on Paid and Unpaid Losses
11. Modified Coinsurance Reserve
12. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was assumed (life insurance, annuities, deposit funds and other liabilities without life or disability contingencies, and related benefits) for the calendar year.

**Part 1 – Section 2.** Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year

Please create a spreadsheet with the following columns (total columns 7 through 12):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Reinsured
5. Domiciliary Jurisdiction
6. Type of Reinsurance Assumed
7. Premiums
8. Unearned Premiums
9. Reserve Liability Other Than For Unearned Premiums
10. Reinsurance Payable on Paid and Unpaid Losses
11. Modified Coinsurance Reserve
12. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was assumed (accident and health insurance) for the calendar year.

**Part 2.** Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 6 and 7):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location
6. Paid Losses
7. Unpaid Losses

Each row shall list each insurer for which reinsurance on paid and unpaid losses is recoverable.

**Part 3 – Section 1.** Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 7 through 14):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date

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4. Name of Company
5. Location
6. Type of Reinsurance Ceded
7. Amount in Force at End of Year
8. Reserve Credit Taken Current Year
9. Reserve Credit Taken Prior Year
10. Premiums
11. Outstanding Surplus Relief Current Year
12. Outstanding Surplus Relief Prior Year
13. Modified Coinsurance Reserve
14. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was ceded (life insurance, annuities, deposit funds and other liabilities without life or disability contingencies and related benefits).

**Part 3 – Section 2.** Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year  
Create a spreadsheet with the following columns (total each column 7 through 13):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location
6. Type
7. Premiums
8. Unearned Premiums (Estimated)
9. Reserve Credit Taken other than for Unearned Premiums
10. Outstanding Surplus Relief Current Year
11. Outstanding Surplus Relief Prior Year
12. Modified Coinsurance Reserve
13. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was ceded (accident and health insurance).

**Historical Note**

Exhibit D made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

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**ARTICLE 17. EXAMINATIONS****R20-6-1701. Definitions**

- A. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the Director.
- B. "Examination" shall be defined for purposes of this Article to mean any examination relating to the financial condition of a company.
- C. "Examiner" means any individual or firm having been authorized by the Director to conduct an examination under this Article.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1701 recodified from R4-14-1701 (Supp. 95-1).

**R20-6-1702. Authority, Scope, and Scheduling of Examinations**

- A. The Director shall examine an insurer under A.R.S. § 20-156(A) at least once every five years.
- B. Instead of the examination under subsection (A), the Director may accept the most recent examination report prepared by the National Association of Insurance Commissioners insurance regulatory authority of another state on any foreign or alien insurer if:
  1. The insurance regulatory authority was accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program at the time of the examination,
  2. A National Association of Insurance Commissioners accredited insurance regulatory authority supervised the examination, or
  3. At least one examiner employed or contracted by a National Association of Insurance Commissioners accredited insurance regulatory authority:
    - a. Participated in and reviewed the examination work papers and report, and
    - b. Signed an affidavit stating that the examination was performed in a manner consistent with the standards and procedures required by the National Association of Insurance Commissioners accredited insurance regulatory authority.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended effective October 27, 1993 (Supp. 93-4). R20-6-1702 recodified from R4-14-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2975, effective September 10, 2005 (Supp. 05-3).

**R20-6-1703. Conduct of Examinations**

- A. Upon determining that an examination should be conducted, the Director or the Director's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination.
- B. Nothing contained in this Article shall be construed to limit the Director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state or to pursue such action concurrent with the examination.
- C. The Director may disclose the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country or to law enforcement officials of this or any other state or agency of the federal government at any time. Prior to

making such disclosure, the Director may require such other department or office to agree in writing to hold as confidential the examination report, preliminary examination report or results or any matter relating thereto until such time as the examination report, preliminary examination report or results or matter relating thereto are made public by the Director.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1703 recodified from R4-14-1703 (Supp. 95-1).

**R20-6-1704. Examination Reports**

- A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find warranted from the facts.
- B. No later than 60 days following completion of the examination, the examiner in charge shall submit to the Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not less than 10 days nor more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.
- C. Within 30 days after the end of the period allowed for the receipt of written submissions or rebuttals, the Director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and shall:
  1. File the examination report as submitted or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Director, the Director may order the company to take any action necessary and appropriate to cure such violation; or
  2. Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and resubmission pursuant to subsection (B).

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1704 recodified from R4-14-1704 (Supp. 95-1).

**ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS****R20-6-1801. Definitions**

In this Chapter, the following definitions apply:

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

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

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

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

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

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

“Department” means the Arizona Department of Insurance.

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

“Director” means the director of the Arizona Department of Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

#### R20-6-1802. Application for Certificate of Authority

- A. A person who wishes to operate as prepaid dental plan organization in Arizona shall file an application for certificate of authority under A.R.S. § 20-1003 for the director’s review and approval under A.R.S. § 20-1004. The application shall contain all the information required in A.R.S. § 20-1003 and R20-6-1802.

- B. An authorized insurer shall issue the fidelity bond required under A.R.S. § 20-1004(A)(4).
- C. An Organization shall not commence operation of, or service under, a prepaid dental plan without approval of the director under A.R.S. § 20-1004.
- D. An application is deemed filed with the director when the director receives it. The applicant shall include fees under A.R.S. § 20-167 with the application.
- E. An applicant not domiciled in this state shall file a power of attorney as required by A.R.S. § 20-1003(A)(11) on a Department-prescribed form, with the application.
- F. Within 180 days after the director issues a certificate of authority to an Organization, the Organization shall notify the director in writing of each member appointed to the board of directors for the Organization under A.R.S. § 20-1003(A)(4).
- G. At the time it submits its application for certificate of authority, an Organization shall submit a written program of compliance with supporting documents that specify how the Organization will comply with the provisions of this Article. The written program of compliance shall contain the following:
1. The responsibilities of and qualifications for the following positions:
    - a. The Organization’s chief executive officer, and
    - b. The Organization’s dental director;
  2. A plan for provision of basic dental services required under R20-6-1806(A) and a copy of the schedule of benefits required under R28-6-1806(B);
  3. A description of the system for delivery of services under R20-6-1807;
  4. A description of the geographic area designated under R20-6-1808;
  5. A plan for compliance with contract requirements under R20-6-1809 and a copy of a contract with a general dentist and a specialist;
  6. A plan for compliance with records requirements under R20-6-1810; and
  7. The Organization’s quality improvement plan under R20-6-1811.
- H. An application shall include the following information:
1. The proposed number of members, and
  2. A copy of a letter from each network dentist that documents the dentist’s intent to contract with the Organization to provide services to patients under the Organization’s prepaid dental plan.
- I. The director may require that an applicant for a certificate of authority under A.R.S. § 20-1003(A)(14) submit information that discloses biographical, employment and business financial history, criminal activity, fingerprints, or any information that relates to the ability to operate a prepaid dental plan for principals, principal officers, controlling persons, and insurance producers of the applicant, if necessary for the protection of residents of this State.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

#### R20-6-1803. Chief Executive Officer

- A. The governing authority shall appoint a chief executive officer (CEO). The CEO shall have:
1. The education and experience to manage the Organization, and
  2. Responsibility for the geographic area in Arizona that the Organization serves, including:
    - a. Implementing the policies of the governing authority, and

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- b. Maintaining adequate personnel to ensure compliance with applicable Arizona statutes and rules.
- B.** The governing authority shall notify the Department within ten days after the effective date of a change in the appointment of the CEO.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1804. Dental Director**

- A.** The governing authority or CEO shall appoint as the Organization's dental director a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia.
- B.** The dental director shall perform at least the following functions for the Organization's geographic area in Arizona:
1. Participate on the Organization's quality improvement committee required under R20-6-1811;
  2. Oversee the Organization's program and processes for:
    - a. Maintaining and improving clinical quality of care, including continuity of care;
    - b. Provider relations;
    - c. Facility and dental record reviews; and
    - d. Provider credentialing and recredentialing;
  3. Be knowledgeable about and participate in decisions regarding the Organization's operations;
  4. Comply with A.R.S. § 20-2510(B) and (C) when directly denying, on the basis of medical necessity, a health care provider's request for prior authorization; and
  5. Timely respond to matters within the Organization's Arizona geographic area that require personal onsite attention or ensure that a designee who meets the requirements specified in subsection (D) timely responds to those matters.
- C.** Matters that require personal onsite attention include:
1. Urgent patient care issues that require examination of dental records or X-rays;
  2. Prompt personal discussion with a provider of urgent concerns relating to credentialing, disciplinary problems, access to care, or quality of care.
- D.** Any designee acting under subsection (B)(5) shall:
1. Be a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia;
  2. Have expedient access to the dental director, the CEO, and other organization management personnel as necessary to resolve any matter requiring personal onsite attention; and
  3. Have the education, experience, and Organizational knowledge required to address the matter requiring personal onsite attention.
- E.** The Organization shall notify the Department in writing within ten days after the effective date of a change in the appointment of the dental director or any designee.
- F.** The requirements for a designee under subsections (B)(5), (D), and (E) shall not apply to an Organization with fewer than 2,000 members in Arizona.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1805. Required Reporting**

- A.** An Organization shall submit to the Department in writing for review any proposed change to the program of compliance. The Department shall notify the Organization in writing within 30 days of receipt of the proposed change whether the submission is administratively complete. The Department shall com-

plete its substantive review and notify the Organization of approval or disapproval of the proposed change within 60 days of notification of administrative completeness.

- B.** An Organization shall provide the following information about the prepaid dental plan to the Department quarterly:
1. The total number of members and the number of members assigned to each general dentist's office;
  2. A list of all contracted network general dentists and specialists that notes those who have been added or deleted since the previous quarterly report;
  3. Verification that each specialist added to the network since the last quarterly report has graduated from a specialty graduate program accredited by the American Dental Association; Documentation of the Organization's quality improvement activities, including the number of providers who have been credentialed or re-credentialed since the last quarterly report, the number of facility reviews, and the number of chart reviews;
  4. The average wait time measured in weeks for an appointment for each network dentistry office;
  5. A copy of the current provider directory; and
  6. A complaint log with a summary of Organization responses by complaint category.
- C.** An Organization shall submit the following information to the Department at least annually:
1. Member satisfaction survey results and supporting data;
  2. Results of a survey of network general dentistry offices with supporting data confirming a recall system under R20-6-1809(B)(2);
  3. An electronic database that lists the name, address, and telephone number of each provider and whether the provider is accepting new members. The Organization shall submit the database for general dentists and specialists separately. The Organization shall submit any changes to this database to the Department quarterly; and
  4. A report that compiles all the copays listed in all the schedules of benefits offered by the Organization, with comparisons of the copays to the usual, customary, and reasonable fees, as determined by the Organization, for the procedures listed on the schedule of benefits.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1806. Basic Dental Services**

- A.** A prepaid dental plan shall provide the basic dental services listed below:
1. Emergency dental services on a 24-hour-per-day basis,
  2. Diagnostic services,
  3. Preventive services, and
  4. Restorative services.
- B.** An Organization shall publish and make available to its members and purchasers a schedule of benefits that includes the dental plan's basic dental services and other available dental services and any associated copays.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1807. System for Delivery of Services**

- A.** An Organization shall have a system for delivery of services that includes:
1. An adequate network of general dentists. To determine network adequacy, the Department shall consider the following:

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

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1808. Geographic Areas**

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

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1809. Contract Requirements**

- A.** An Organization shall have a written contract with each provider that documents the requirements for providing services under the prepaid dental plan and the terms of the agreements between the parties. The Organization shall ensure that the provider complies with all contract requirements.
- B.** In addition to the requirements in subsection (A), an Organization shall ensure that its contract with a provider includes the following provisions:
1. That the Organization has authority to review the provider's records,
  2. That the provider is responsible to implement and maintain a process to inform assigned members of the need to schedule periodic preventive dental services based on the member's oral health status, and
  3. That the provider is responsible to complete any procedure undertaken upon a member if the contract is terminated or expires.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1810. Records**

- A.** Dental records are the property of the provider and shall not be removed from the provider's possession, except:
1. With the patient's permission, including for routing records to a dental or medical practitioner for consultation or evaluation; or
  2. When subpoenaed by a court or BODEX.
- B.** An Organization shall maintain at its principal office a copy of each issued or delivered advertising matter or sales material, letter of solicitation, evidence of coverage, provider directory, certificate, agreement, or contract. The Organization shall note the date each advertising matter or sales material is filed with the Department and the date of distribution to any person. The advertising matter or sales material shall be maintained for at least three years.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1811. Quality Improvement**

- A.** An Organization shall have a governing authority.
- B.** The governing authority shall appoint a quality improvement committee that consists of the chief executive officer or designee, the dental director, the person who manages the Organization's quality improvement process, and at least one dental health professional. The committee may also include network allied health professionals and members of the plan.
- C.** The quality improvement committee shall:
1. Meet at least quarterly,
  2. Review and evaluate dental services delivered under the Organization's plan, and
  3. Establish procedures for recordkeeping and distribution of committee reports.
- D.** An Organization shall provide the director with a copy of the minutes of each quality improvement committee meeting within 30 days of the quality improvement committee meeting.
- E.** An Organization shall maintain a written quality improvement plan that contains procedures for each of the following:

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1. Ensuring that a dentist licensed in any state or territory of the United States or District of Columbia reviews and evaluates dental care and services provided by each contracted general dentist at least once every three years;
2. Allocation of the Organization's resources to analyze a problem or any identified deficiency;
3. Implementing a corrective action plan and methods for monitoring improvement;
4. Notifying a member in writing of the member's responsibility to cooperate with those providing dental care services and of the member's rights to:
  - a. Voice concerns about the Organization or care provided;
  - b. Be provided with information about the Organization, its services, providers, and member rights and responsibilities;
  - c. Participate in decisions about the member's dental care; and
  - d. Be treated with respect and have the right to privacy recognized;
5. Monitoring and improving membership satisfaction;
6. Maintaining an accurate provider directory that meets at least the following requirements:
  - a. Lists only credentialed providers who are currently scheduling members for diagnosis and treatment; and
  - b. Clearly designates providers who are not accepting new members;
7. Review by the dental director of the following for initial credentialing of network providers:
  - a. Query to the National Practitioner Data Bank;
  - b. Query to BODEX;
  - c. Valid United States Drug Enforcement Administration certificate, if applicable;
  - d. Evidence of current malpractice insurance; and
  - e. Documentation that each specialist has graduated from an accredited specialty graduate program as required by BODEX.
8. Recredentialing, at least every three years, that updates information obtained in subsections (E)(7)(b) through (d), for the dental director's review.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1812. Confidentiality of Records**

An Organization shall not disclose information obtained pertaining to the diagnosis, treatment, or health of a member to any person except:

1. To the extent necessary to carry out this Article;
2. Upon the express written consent of the member, applicant, provider, or Organization, as appropriate; or
3. Under statute or court order for the production or discovery of evidence or as part of a civil or criminal investigation.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1813. Assignment of Members**

- A. Within 30 days of enrollment, an Organization shall assign a member to the provider the member chooses. The Organization, however, shall choose and assign a provider to a member within 30 days of any of the following:
  1. Receipt of a member enrollment form that does not designate a provider, or receipt of a member enrollment form that designates a provider who is unavailable;
  2. The date of the notice that the member's assigned provider intends to cease providing services; or
  3. The date the member's assigned provider becomes unavailable, for any reason.

- B. An Organization shall give each member the option of selecting a network provider other than the provider assigned by the Organization under subsection (A).
- C. An Organization shall maintain a continuous assignment process in compliance with subsection (A) and (B), allowing no more than 4% of members to be unassigned at any time.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**ARTICLE 19. HEALTH CARE SERVICES ORGANIZATIONS OVERSIGHT****R20-6-1901. Applicability**

- A. This Article applies to:
  1. All proposed and existing health care services organizations (HCSOs), and
  2. Each product offered by an HCSO under the HCSO's certificate of authority.
- B. The Department shall not issue a certificate of authority to an HCSO unless the HCSO meets the requirements of this Article.
- C. The Department shall not require an existing HCSO to re-file information already on file with the Department, but the HCSO shall modify its operations and procedures as may be necessary to comply with this Article and file with the Department all additional information necessary to make statements complete and current.
- D. This Article applies to inpatient emergency care, but does not apply to emergency services.
- E. This Article applies only to covered services.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1902. Definitions**

In this Article, the following definitions apply:

"Access" or "accessibility" means the extent to which an enrollee can obtain timely covered services from a contracted provider at the appropriate level of care, and appropriate location.

"Adult" means an enrollee in the age group the HCSO has designated for an adult.

"Adult PCP" means a primary care provider practicing in any specialty the HCSO designates as adult primary care.

"Ancillary provider" means a provider of laboratory, radiology, pharmacy or rehabilitative services, physical therapy, occupational therapy, or speech therapy, home health services, dialysis, and durable medical equipment or medical supplies dispensed by order or prescription of a provider with the appropriate prescribing authority.

"Available" or "availability" means the extent to which the plan has contracted providers of the appropriate type and numbers at geographic locations to afford members access to timely covered services.

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“Chief executive officer” or “CEO” means the person who has the authority and responsibility for the operation of the health care services organization according to applicable legal requirements and policies approved by the governing authority.

“Child” means an enrollee in the age group the HCSO has designated for children.

“Contracted” means a provider has a current written agreement or an employment arrangement with an HCSO to provide covered services to an enrollee, or a current written agreement or an employment arrangement with a contracted provider to provide covered services to an enrollee.

“Covered” or “covered services” means the health care services described as covered benefits in the HCSO’s evidence of coverage.

“Day” means calendar day unless specified otherwise.

“Department” means the Department of Insurance.

“Effective process” means written policies and procedures that:

Outline the steps that the HCSO implements and consistently follows internally,

The HCSO subjects to internal quality improvement, and

The HCSO communicates to providers when established or changed.

“Emergency services” has the meaning in A.R.S. § 20-2801(3).

“Enrollee” means an individual who is enrolled in a health plan operated by an HCSO.

“Facility” means an institution that is licensed or authorized to furnish health care services in this state, including general hospitals, special hospitals, residential treatment centers, residential rehabilitation centers, skilled nursing facilities, urgent care centers, and ambulatory surgical treatment centers.

“Governing authority” means a person or body such as a board of trustees or board of directors in whom the ultimate authority and responsibility for the direction of the HCSO is vested.

“HCSO” means a health care services organization.

“Health care services” has the meaning in A.R.S. § 20-1051(6).

“High profile” means one of no fewer than four specialties designated by the HCSO, and does not include obstetrics-gynecology. An HCSO may designate a specialty as high profile on the basis of high volume or other basis the HCSO reasonably determines is directly related to providing covered services to a member.

“Hospital” means a facility that provides inpatient care, medical services, and continuous nursing services for the diagnosis and treatment of patients.

“Inpatient care” means the covered services that an enrollee who is admitted to a hospital receives for at least 24 consecutive hours.

“Inpatient emergency care” means covered services that would be emergency services if provided in a licensed hospital emergency facility.

“License” means documented authorization issued by the appropriate state of Arizona agency to operate a facility in Arizona, or to practice a health care profession in Arizona.

“Medically necessary” has the meaning set forth in the HCSO’s evidence of coverage.

“Network” means the group of providers contracted with an HCSO to provide covered services to an enrollee covered under the HCSO’s health benefit plan.

“Network exception” means an enrollee receives covered services from a non-contracted provider either:

Because there is no contracted provider accessible or available that can provide the enrollee timely covered services, or

For any reason the HCSO determines it is in the enrollee’s best interests to receive care from a non-contracted provider.

“Non-contracted” means a provider that does not have a contract with an HCSO to provide services to an enrollee.

“Normal business hours” means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state or national holidays.

“Outpatient care” means covered services that an enrollee who is not an inpatient receives.

“Pediatric primary care provider” means a physician or practitioner practicing in any specialty the HCSO designates as pediatric primary care.

“Physician” means a licensed doctor of allopathic, chiropractic, optometric, osteopathic, or podiatric medicine.

“Practitioner” means any individual other than a physician who is licensed to furnish health care services, including behavioral health care services, in this state.

“Preventive care” means health maintenance care the HCSO provides or arranges to prevent illness and to improve the general health of an enrollee, including:

Immunizations,

Health education,

Health evaluation and follow-up,

Early disease detection,

Screening tests appropriate for a person’s age and gender, and

Periodic health care examinations.

“Primary care” means any specialty the HCSO designates as primary care.

“Primary care physician” or “PCP” means a physician or practitioner practicing in a specialty the HCSO designates as primary care.

“Provider” means any physician, practitioner, ancillary provider, or facility.

“Quality improvement” means an HCSO’s system for assessing and improving the level of performance of key process and outcomes.

“Routine care” means covered primary care for an enrollee’s non-urgent, symptomatic condition.

“Rural” means a zip code area with fewer than 1,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.

“Service area” means any geographic area designated by any HCSO and approved by the Director under A.R.S. § 20-1053(A)(11).

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“Specialty care provider” or “SCP” means a physician or practitioner who has education, training, or qualifications in a specialty, other than primary care, beyond the education or qualifications required for the license.

“Specialty” or “specialty care” means a specific area of medicine practiced by a physician or practitioner who has education, training, or qualifications in that specific area of medicine in addition to the education or qualifications required for the physician’s or practitioner’s license.

“Special hospital” means a hospital that is licensed to provide hospital services within a specific area of medicine, or limits patient admission according to age, gender, type of disease, or medical condition.

“Suburban area” means any zip code area with 1,000-3,000 persons per square mile, as calculated annually by a population data gathering service designated by the Director.

“Telemedicine” means diagnostic, consultation, and treatment services that occur in the physical presence of an enrollee on a real-time basis through interactive audio, video, or data communication.

“Timely” means services are provided at the time when medically necessary.

“Travel expenses” has the meaning set forth in writing by an HCSO.

“Urban area” means a zip code with more than 3,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.

“Urgent care” means unscheduled services for an enrollee’s condition that requires medical attention not amenable to scheduling in order to avoid a serious risk of harm.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1903. Documentation**

The CEO shall ensure that the HCSO’s policies, procedures, plans, class specifications, orders, reports, minutes of meetings, contracts, agreements, records, and duty schedules are in writing, compiled and indexed in one or more manuals, and readily available for inspection by the Director.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1904. Health Care Plan**

- A. An HCSO shall submit a statement to the Department that describes the proposed health care plan.
- B. The HCSO shall have an organized system for the delivery of health care services contained in subsection (D) that includes the following:
  1. Contracted providers that provide services under the plan;
  2. An effective process to promote a continuing relationship between an enrollee and the same PCP; and
  3. An effective process for referrals that ensures continuity of care to an enrollee.
- C. The HCSO shall list:
  1. The proposed or actual enrollment;

2. The number and names of contracted, employed, or HCSO-owned providers that will serve the enrollees and the board eligibility or certification of each physician, if applicable; and
3. The plan for providing covered services to enrollees as required under this Article.

- D. The HCSO’s health care plan shall provide within the geographic area served the following basic health care services covered by the monthly charges in the evidence of coverage:
  1. Emergency care that includes emergency services and inpatient emergency care;
  2. Inpatient care;
  3. Specialty care, primary care, or ancillary care that includes diagnostic and therapeutic services;
  4. Outpatient care;
  5. Preventive care; and
  6. Emergency ambulance services under A.R.S. § 20-2801(2), and other ambulance services when approved by a plan physician.
- E. The HCSO shall provide appropriate coverage for out-of-area emergency care to an enrollee traveling outside the area served by the HCSO.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). R20-6-1904 repealed; new Section R20-6-1904 renumbered and amended from R20-6-1906 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1905. Geographic Area**

- A. An applicant shall describe the proposed geographic area in at least one of the following ways:
  1. Legal description,
  2. Local governmental jurisdiction such as city or county,
  3. Census tracts,
  4. Street boundaries, or
  5. Area within a specified radius of a specified intersection or a specified primary care center.
- B. An applicant shall submit a map that shows the boundaries for the proposed geographic area.
- C. An applicant shall submit a description of the proposed network including the data required under R20-6-1913(A)(2) and (A)(3).
- D. All advertising matter and sales material provided a prospective enrollee shall include a description of the geographic area in terms readily understandable by the general public.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). R20-6-1905 repealed; new Section R20-6-1905 renumbered and amended from R20-6-1907 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1906. Chief Executive Officer**

- A. The governing authority shall appoint a CEO who has appropriate education and experience to manage the HCSO. The governing authority shall define the authority and duties of the CEO in writing. The CEO is the appointed representative of the governing authority and is the executive officer of the HCSO.
- B. The CEO shall have at least the following duties and responsibilities:
  1. Manage the HCSO;
  2. Establish and implement policies, procedures, and effective processes of the HCSO;

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3. Act as liaison between the governing authority and the providers of healthcare and other services to the HCSO; and
  4. Establish a written plan of authority that will be in place in the CEO's absence.
- C. When there is a change of CEO, the governing authority shall notify Department within 10 days after the effective date of change.
- D. The HCSO shall ensure that all HCSO employees and contracted providers are knowledgeable about and qualified to perform the duties assigned to them through employment or by contract.
- E. The HCSO shall designate a central place of business within the major geographic area served at which the CEO shall be based and from which the HCSO shall direct administrative activities.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1906 renumbered to R20-6-1904; new Section R20-6-1906 renumbered and amended from R20-6-1908 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1907. Medical Director**

- A. The HCSO shall designate a physician as medical director.
- B. The medical director shall be responsible for planning and implementing the method for the continuing review and evaluation of health care provided by the HCSO and the continuing education of its providers of health care services. The medical director may also serve as the CEO if the medical director has appropriate education and experience to manage the HCSO.
- C. The medical director responsibilities include:
  1. Supervising medical staff;
  2. Performance planning and evaluating medical staff;
  3. Coordinating medical staff activities; and
  4. Developing medical care policies.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1907 renumbered to R20-6-1905; new Section R20-6-1907 renumbered and amended from R20-6-1909 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1908. Quality Assurance**

- A. The HCSO shall provide an effective process for a continuing review and evaluation of the covered services it provides to enrollees to ensure that:
  1. Treatment and level of covered services are appropriate and adequate and
  2. The quality of covered services is acceptable to the HCSO.
- B. The HCSO shall have a quality assurance committee that includes at least the CEO or designee, the medical director, and representative network providers. The quality assurance committee shall:
  1. Arrange for physicians or practitioners to review and evaluate covered services provided by others physicians or practitioners within the respective disciplines.
  2. Adopt administrative procedures covering frequency of meetings, recordkeeping, committee reports, and disseminating the reports.
- C. The HCSO's effective process in subsection (A) shall include the following:
  1. Standards for health care;

2. Monitoring of care;
3. Analysis of any deficiency;
4. Correcting a deficiency including submitting a schedule for correcting the deficiency, requiring continuing education for the provider, if appropriate, and follow-up and periodic reassessment of the deficiency.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1908 renumbered to R20-6-1906; new Section R20-6-1908 renumbered and amended from R20-6-1911, by final rulemaking at 11 A.A.R. 4861, effective December 31, 2006 (Supp. 05-4).

**R20-6-1909. Evaluation of Network**

Each HCSO shall have an effective process to evaluate the adequacy of its network to provide an enrollee with timely covered services.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Former R20-6-1909 renumbered to R20-6-1907; new Section R20-6-1909 made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1910. Process for Referral, Prior Authorization, Precertification, or Network Exception**

- A. An HCSO shall have an effective process for assisting an enrollee to obtain timely covered services when the enrollee or enrollee's referring provider cannot find a contracted provider who is timely accessible or available.
- B. An HCSO shall have an effective process during normal business hours for handling referrals, prior authorizations, precertifications, or network exceptions necessary for timely routine care. This process may include the HCSO's procedure for standing referrals required in A.R.S. § 20-1057.01.
- C. Each HCSO shall have an effective process to handle referrals or network exceptions necessary for timely urgent care seven days a week.
- D. An HCSO that requires prior authorization or precertification for urgent care shall have an effective process to handle requests for prior authorization or precertification 24 hours a day, seven days a week.
- E. An HCSO shall have an effective process for handling network exceptions that ensures the HCSO reimburses an enrollee for any out-of-network cost the enrollee incurs that the enrollee would not have incurred if the enrollee had received the services in-network.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1911. HCSO Communication with Providers**

An HCSO shall have an effective process for communicating with contracted providers regarding the following:

1. The providers in the network,
2. Contractual or administrative changes relating to enrollee access or provider availability, and
3. Procedures for handling claims and grievances submitted by providers.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Former R20-6-

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1911 renumbered to R20-6-1908; new R20-6-1911 made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1912. Network Directories**

A. An HCSO shall publish a provider network directory as follows:

1. An HCSO shall list the name, address, telephone number, specialty, and hospital affiliation for all in-area contracted physicians or practitioners.
2. An HCSO may list ancillary providers by corporate or group name and is not required to list individual physicians or practitioners.
3. An HCSO is not required to list physicians or practitioners in the following areas of specialties or areas of practice:
  - a. Emergency medicine;
  - b. Anesthesiology, except anesthesiologists who provide pain management services;
  - c. Hospital-based pathology;
  - d. Hospital-based radiology; and
  - e. Hospitalists.
4. An HCSO that lists any of the physicians or practitioners in subsections R20-6-1912(A)(3)(a) through (A)(3)(e) may list by corporate or group name and is not required to list individual physicians or practitioners.
5. An HCSO that uses hospitalists is not required to list the hospital affiliations of PCPs who do not admit or attend hospitalized members.
6. An HCSO shall publish a provider network directory that lists all its contracted facilities and contains:
  - a. The name, address, and telephone number of each facility;
  - b. For each hospital at which the HCSO uses hospitalists, if any, a statement that the HCSO uses hospitalists at that hospital;
  - c. For an HCSO that uses hospitalists and does not list them in the directory, information on how an enrollee can find out what hospitalists or group of hospitalists it uses at each hospital;

B. The network directory shall conspicuously state in the directory the following:

1. Changes occur in the network after the directory is published and some providers listed in the directory may no longer be contracted,
2. Enrollee coverage may depend on the contract status of the provider,
3. Where the enrollee can obtain more recent directory information,
4. The effective date of the network directory, and
5. The method for an enrollee or prospective enrollee to find out which PCPs are accepting new enrollees from the HCSO.

C. Each HCSO shall make its network directory available on paper to enrollees or prospective enrollees requesting it. The HCSO shall:

1. Publish the paper directory at least once a year;
2. Update or supplement the information in the paper directory at least every six months;
3. Explain in the paper directory how an enrollee or prospective enrollee can use or get assistance using the HCSO's online or telephone directories, if any; and
4. Have discretion to list physicians' or practitioners' hospital affiliations in its paper directory.

D. Each HCSO that has an online network directory shall:

1. Update the online directory at least monthly;

2. Make the online directory easy to use and user friendly; and
3. Explain, in the online directory, how an enrollee or prospective enrollee can obtain a paper directory.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1913. Demographic Information Reports**

A. An HCSO shall report the following data to the Department:

1. For each enrollee, report annually:
  - a. Street address,
  - b. Zip code,
  - c. Gender, and
  - d. Year of birth.
2. For all contracted providers, report semiannually:
  - a. Provider name,
  - b. Street address or addresses at which the provider provides covered services,
  - c. Zip code, and
  - d. Arizona license number,
3. For all contracted physicians or practitioners, report semiannually:
  - a. Specialty, and
  - b. Medical or other applicable degree or information that designates the type of physician or practitioner.

B. The HCSO shall report the information in subsection (A) to the Department by the following deadlines:

1. For information in subsection (A)(1) as of December 31 of each calendar year, by February 15 of the next calendar year.
2. For information in subsection (A)(2) as of June 30, by August 15 of the same calendar year.
3. For information in subsection (A)(2) as of December 31, by February 15 of the next calendar year.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1914. Access**

An HCSO shall provide to or arrange for its enrollees services or appointments for services as follows:

1. For preventive care services from a contracted PCP, an appointment date within 60 days of the enrollee's request, or sooner if necessary, for the enrollee to be immunized on schedule.
2. For routine-care services from a contracted PCP, an appointment date within 15 days of the enrollee's request to the PCP or sooner if medically necessary.
3. For specialty care services from a contracted SCP, an appointment date within 60 days of the enrollee's request or sooner if medically necessary.
4. In-area urgent care services from a contracted provider seven days per week.
5. Timely non-emergency inpatient care services from a contracted facility.
6. Timely services from a contracted physician or practitioner in a contracted facility including inpatient emergency care.
7. Services from a contracted ancillary provider during normal business hours, or sooner if medically necessary.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6 1915. Alternative Access**

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- A. As an alternative to providing access to covered services from a physician, an HCSO may provide access to covered services from an appropriately licensed practitioner.
- B. As an alternative to providing access to covered services at a hospital under R20-6-1914, an HCSO may provide access to covered services at another appropriately licensed facility.
- C. As an alternative to providing access to covered services from a physician or practitioner who sees an enrollee in person under R20-6-1914, an HCSO may provide access to necessary covered services through:
  - 1. Telephone calls and messages,
  - 2. Electronic mail,
  - 3. Communication with the physician's or practitioner's staff,
  - 4. Coverage by another physician or practitioner, or
  - 5. Telemedicine,
- D. An HCSO that panels enrollees to PCPs may panel enrollees to appropriately licensed practitioners.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1916. Availability Ratios**

- A. An HCSO shall maintain a ratio of contracted adult PCPs to adults that is adequate to provide those adults with covered services. An HCSO with a Medicare Advantage (MA) plan may have one ratio that applies to both its insured and MA populations, or a separate ratio for each.
- B. An HCSO shall maintain a ratio of contracted pediatric PCPs to children that is adequate to provide those children enrollees with covered services.
- C. An HCSO shall maintain a ratio of contracted high profile SCPs to enrollees that is adequate to provide those enrollees with covered services that include services at contracted facilities. An HCSO with a MA plan may have one ratio that applies to both its insured and MA populations, or a separate ratio for each.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1917. Geographic Availability in an Urban Area**

An HCSO shall provide each enrollee living in an urban area of the HCSO's service area the following:

- 1. Primary care services from a contracted PCP located within 10 miles or 30 minutes of the enrollee's home;
- 2. High profile specialty care services from a contracted SCP located within 15 miles or 45 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted general hospital, or contracted special hospital, within 25 miles or 75 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1918. Geographic Availability in a Suburban Area**

Each HCSO shall provide each enrollee member living in a suburban area within the HCSO's service area the following:

- 1. Primary care from a contracted PCP located within 15 miles or 45 minutes of the enrollee's home;
- 2. High profile specialty care services from a contracted SPC within 20 miles or 60 minutes of the enrollee's home; and

- 3. Inpatient care in a contracted hospital, or a contracted special hospital within 30 miles or 90 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1919. Geographic Availability in a Rural Area**

An HCSO shall provide each enrollee living in a rural area with primary care services from a contracted physician or practitioner within 30 miles or 90 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1920. Travel Requirements**

- A. An HCSO may require an enrollee to travel a greater distance in-area to obtain covered services from a contracted provider than the enrollee would have to travel to obtain equivalent services from a non-contracted provider, except where a network exception is medically necessary. Nothing in this Section creates an exception to R20-6-1918 through R20-6-1920.
- B. If the HCSO prior-authorizes services that require an enrollee to travel outside the HCSO service area because the services are not available in the area, the HCSO shall reimburse the enrollee for travel expenses. Except as provided under R20-6-1904(E)(6), an HCSO is not required to reimburse an enrollee for travel expenses the enrollee incurs to obtain covered services in-area.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1921. Enforcement Consideration**

In determining the appropriate enforcement action or penalties for failure to comply with these rules, the Department shall consider any documentation the HCSO provides regarding:

- 1. Whether seasonal shifts in demand affect access and availability of covered services;
- 2. Whether the HCSO's demographic information has changed significantly since the HCSO's most recent report;
- 3. Whether an enrollee has refused to accept covered services the HCSO has offered in the time-frames or locations required of the HCSO by this Article;
- 4. Whether an enrollee has requested and obtained covered services from a contracted provider whose location, or appointment availability, or capacity result in the HCSO's non-compliance; and
- 5. Whether market factors indicate that on a short-term basis, compliance is not possible. Market factors include shortage of providers, enrollee or provider location, and provider practice or contracting patterns.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

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**ARTICLE 20. CAPTIVE INSURERS****R20-6-2001. Reserved****R20-6-2002. Fees; Examination Costs**

- A.** A corporation applying for a license to do business as a captive insurer, under A.R.S. § 20-1098, shall pay a nonrefundable fee of \$1,000.00 to the Department for issuance of the license. A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098, also shall pay to the Department a nonrefundable fee of \$1,000 for each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(B)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.
- B.** A captive insurer shall pay a nonrefundable annual renewal fee of \$5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of \$2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.
- C.** A captive insurer shall pay a nonrefundable fee of \$200.00 to the Department at the time of filing for issuance of an amended certificate of authority.
- D.** In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination the Director conducts, under A.R.S. § 20-1098.08.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2478, effective July 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 2977, effective September 13, 2005 (Supp. 05-3). Subsection (A) corrected at request of the Department, Office File No. M11-252, filed July 20, 2011 (Supp. 11-3).

**ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM**

*Article 21, consisting of R20-6-2101 through R20-6-2104, made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).*

**R20-6-2101. Definitions**

The following definitions apply in this Article:

1. "Consumer" means an individual, or the individual's legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information. Consumer can include a prospective applicant, policyholder, certificateholder, insured, or claimant.
2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means nonpublic personal information and privileged information about a customer whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic, or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).

6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, but does not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a licensee.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**R20-6-2102. Customer Information Security Program**

A licensee shall implement a comprehensive written customer information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**R20-6-2103. Objectives of Customer Information Security Program**

A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**R20-6-2104. Guidelines for Methods of Development and Implementation**

A licensee may implement the requirements of R20-6-2102 and R20-6-2103 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
  - a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
  - b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
  - c. Assessing the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.
2. A licensee may manage and control risk by:

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- a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
  - b. Training staff to implement the licensee's information security program; and
  - c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The licensee shall determine the frequency and nature of these tests or other monitoring practices by the licensee's risk assessment.
3. A licensee may oversee service provider arrangements by:
    - a. Exercising appropriate due diligence in selecting its service providers; and
    - b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
  4. A licensee may monitor, evaluate, and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.
- A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:
    1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or A.R.S. § 20-1404(A), except health insurance issued to an association or its individual members as described in R20-6-2301(B)(7)(b);
    2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
    3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).
  - B. In this Article, the following definitions apply:
    1. "Department" means the Arizona Department of Insurance.
    2. "Blanket disability insurance" has the meaning prescribed in A.R.S. § 20-1404(A).
    3. "CMS" means the Centers for Medicare & Medicaid Services.
    4. "Federal medical loss ratio standard" means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
    5. "Health insurance" means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in A.R.S. § 20-1051(5) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
    6. "Health insurer" means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
    7. "Individual health insurance" means health insurance that a health insurer issues to either:
      - a. An individual, to cover:
        - i. The individual, or
        - ii. The individual's dependents, or
        - iii. The individual and the individual's dependents.
      - b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
    8. "PHS Act" means Part A of Title XXVII of the Public Health Service Act, 42 U.S.C. Chapter 6A.
    9. "Product" means a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.
    10. "Preliminary justification" means a justification that consists of the parts described in R20-6-2302(A).
    11. "Rate increase" means an increase of the rates for an individual health insurance product that a health insurer offers in Arizona that:
      - a. Results from a change to the underlying rate structure of the product, and
      - b. May result in premium changes for the product.
    12. "Secretary" means the Secretary of the United States Department of Health and Human Services.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**ARTICLE 22. MILITARY PERSONNEL****R20-6-2201. Military Sales Practices**

- A. The Department incorporates by reference the National Association of Insurance Commissioners (NAIC) Military Sales Practices Model Regulation June 2007 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.
- B. The Model Regulation is modified as follows:
  1. In addition to the terms defined in the Model Regulation, the following definitions apply:
    - a. "Commissioner" means the Director of the Arizona Department of Insurance.
    - b. "Regulation" means Article.
  2. Section 3 is modified to insert "A.R.S. § 20-106, 20-142 and 20-143" after "of."
  3. Section 7(E)(5)(b) is modified to insert "A.R.S. § 20-1241 et seq., R20-6-202, and R20-6-209" after "requirements of."
  4. Subsection 7(F)(5) of the Model Regulation is excluded from this Section.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 4215, effective January 5, 2008 (Supp. 07-4).

**ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE****R20-6-2301. Applicability; Definitions**

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13. "Threshold rate increase" means a rate increase that meets or exceeds an Arizona-specific threshold as noticed by the Secretary in 45 CFR 154.200, provided:
- The average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold; and
  - If a rate increase that does not otherwise meet or exceed the Arizona-specific threshold meets or exceeds the Arizona-specific threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the Arizona-specific threshold and is subject to threshold rate review that shall include a review of the aggregate rate increases during the applicable 12-month period.
14. "Threshold rate review" means the review by the Department under this Article of a threshold rate increase.
15. "Unreasonable rate increase" means a rate increase that results in benefits that are not reasonable in relation to the premium the health insurer charges for the product. The following factors are relevant in determining whether a rate increase results in benefits that are unreasonable in relation to premium:
- The rate increase results in a projected medical loss ratio below the federal medical loss ratio standard after accounting for any adjustments allowable under federal law;
  - One or more of the assumptions on which the health insurer based the rate increase is not supported by sound actuarial reasoning, data and analysis;
  - The choice of assumptions or combination of assumptions on which the insurer based the rate increase is unreasonable;
  - The health issuer provides data or documentation that is incomplete, inadequate or otherwise does not provide a basis upon which the Department can determine the reasonableness of a rate increase; or
  - The increase results in premium differences between insureds within similar risk categories that are unfairly discriminatory under A.R.S. Title 20, Chapter 2, Article 6.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2302. Disclosure of Preliminary Justification**

- A. Preliminary Justification. For each threshold rate increase for each affected product, a health insurer shall submit to the Department and to CMS, on a form and in the manner prescribed by the Secretary in 45 CFR 154.215, a preliminary justification that contains all of the following:
- Preliminary Justification Part I. A summary of the content of the threshold rate increase that includes:
    - Historical and projected claims experience;
    - Trend projections related to utilization, and service or unit cost;
    - Any claims assumptions related to benefit changes;
    - Allocation of the overall rate increase to claims and non-claims costs;
    - Per enrollee per month allocation of current and projected premium; and
    - Three year history of rate increases for the product associated with the rate increase.

- Preliminary Justification Part II. A written description that justifies the rate increase and that contains a simple and brief narrative describing the data and assumptions the health insurer used to develop the rate increase, and includes the following:
  - An explanation of the most significant factors causing the rate increase, including a brief description of the relevant claims and non-claims expense increases reported in subsection (A)(1); and
  - A brief description of the overall experience of the policy, including historical and projected expenses, and loss ratios.
- A health insurer may submit a single, combined preliminary justification that contains all the information in subsections (A)(1) and (2) for threshold rate increases that affect more than one product if the health insurer has aggregated the claims experience of all products to calculate the rate increases and the rate increases are the same for all products.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2303. Timing for Submission of Preliminary Justification**

- A. If R20-6-607 applies to a threshold rate increase, the health insurer shall submit its preliminary justification to the Department and to CMS on the date on which the health insurer files the rate increase request under R20-6-607.
- B. If R20-6-607 does not apply to a threshold rate increase, the health insurer shall submit the preliminary justification to the Department and to CMS at least 60 days prior to the date the health insurer intends to implement the threshold rate increase in Arizona.
- C. The Department shall provide access from its website to the Parts I and II of the Preliminary Justifications of the proposed rate increases that it reviews and have a mechanism for receiving public comments on those proposed rate increases.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2304. Response to Unreasonableness Determination**

If the health insurer receives from CMS a notice that the Department has determined that the health insurer's threshold rate increase is unreasonable, the health insurer shall select one of the following three options:

- Option to not implement the rate increase determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS that it will not implement the rate increase and request the Department to withdraw the rate increase request;
- Option to implement a smaller rate increase than the rate determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS, on a form and in the manner prescribed by the Secretary, that it intends to implement a rate increase that is smaller than the one determined unreasonable. One of the following shall apply to this option:
  - If the health insurer selects this option and the smaller rate increase is not a threshold rate increase, the smaller rate increase is not subject to this Article;
  - If the health insurer selects this option, and R20-6-607 applied to the rate increase the Department determined to be unreasonable, the health insurer

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- shall revise the rate increase filing to reflect the smaller rate increase or file a new rate increase. If the smaller rate increase is a threshold rate increase, the health insurer shall submit a new preliminary justification on the date the health insurer revises the rate increase filing or files a new rate increase; or
- c. If the health insurer selects this option, and R20-6-607 did not apply to the rate increase the Department determined to be unreasonable, and the smaller increase is a threshold rate increase, the health insurer shall submit to the Department and to CMS a new preliminary justification at least 60 days prior to the date the health insurer intends to implement the smaller increase in Arizona.
3. Option to implement the rate increase determined unreasonable. Within 10 business days after the health insurer either implements the rate increase that the Department determined unreasonable, or receives from CMS the Department's determination, the health insurer shall:
    - a. Submit, to the Department and to CMS, a final justification in response to the Department's determination. The information in the final justification shall be the same as the information submitted by the insurer under R20-6-2302(A)(1) and (2) in the preliminary justification supporting the rate increase; and
    - b. Prominently post on its website, on a form and in the manner prescribed by the Secretary under 45 CFR 154.230 the following information:
      - i. The Department's determination that the rate increase is unreasonable and Department's explanation of the Department's analysis of the relevant factors set forth in R20-6-2305(A)(1) and (2), and
      - ii. The health insurer's final justification for implementing the rate increase.
    - c. Continue to make the information in subsection (3)(b) available to the public on its website for at least three years.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2305. Threshold Rate Increase Documentation Requirements**

- A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
  1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
  2. The health insurer's data related to past projections and actual experience.
- B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
  1. The impact of medical trend changes by major service categories;
  2. The impact of utilization changes by major service categories;
  3. The impact of cost-sharing changes by major service categories;
  4. The impact of benefit changes;
  5. The impact of changes in enrollee risk profile;

6. The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
  7. The impact of changes in reserve needs;
  8. The impact of changes in administrative costs related to programs that improve health care quality;
  9. The impact of changes in other administrative costs;
  10. The impact of changes in applicable taxes, licensing or regulatory fees;
  11. Medical loss ratio;
  12. The health insurance insurer's capital and surplus; and
  13. Other relevant documentation at the discretion of the Director.
- C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:
    1. The health insurer submits the preliminary justification required under R20-6-2302, or
    2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION****R20-6-2401. Definitions**

The definitions in A.R.S. § 20-3111 and this Section apply to this Article.

1. "Allowed Amount" is the amount reimbursable for a covered service under the terms of the enrollee's benefit plan. The allowed amount includes both the amount payable by the insurer and the amount of the enrollee's cost sharing requirements.
2. "Alternative Arbitrator" is an individual who is mutually agreeable to the health insurer and health care provider to act as the arbitrator of a surprise out-of-network billing dispute. If the person is contracted with the State of Arizona to conduct arbitration proceedings, the provisions of that contract shall apply. Department staff may not serve as an Alternative Arbitrator.
3. "Amount of the enrollee's cost sharing requirements" means the amount determined by the insurer prior to the dispute resolution process to be owed by the enrollee for out-of-network copayment, coinsurance and deductible pursuant to the enrollee's health care policy.
4. "Arbitrator" has the same meaning as A.R.S. § 20-3111(2) and may include a mediator, arbitrator or other alternative dispute resolution professional who is contracted with the Department to arbitrate a surprise out-of-network billing dispute. Department staff may not serve as an Arbitrator.
5. "A.R.S. § 20-3113 Disclosure" means a written, dated document that contains the following information:
  - a. The name of the billing health care provider;
  - b. A statement that the health care provider is not a contracted provider;
  - c. The estimated total cost to be billed by the health care provider or the provider's representative for the health care services being provided;
  - d. A notice that the enrollee or the enrollee's authorized representative is not required to sign the A.R.S. § 20-3113 Disclosure to obtain health care services;
  - e. A notice that if the enrollee or the enrollee's authorized representative signs the A.R.S. § 20-3113 Disclosure, they may have waived any rights to request

## CHAPTER 6. DEPARTMENT OF INSURANCE

- arbitration of a qualifying surprise out-of-network bill.
6. "Balance bill" means all charges that exceed the enrollee's cost sharing requirements and the amount paid by the insurer.
  7. "Date of service" means the latest date on which the health care provider rendered a related health care service that is the subject of a qualifying surprise out-of-network bill.
  8. "Days" as used in this Article means calendar days unless specified as business days and does not include the day of the filing of a document.
  9. "Department" means the Arizona Department of Insurance or an entity with which it contracts to administer the out-of-network claim dispute resolution process.
  10. "Enrollee's authorized representative" means a person to whom an enrollee has given express written consent to represent the enrollee, the enrollee's parent or legal guardian, a person appointed by the court to act on behalf of the enrollee or the enrollee's legal representative. An enrollee's authorized representative shall not be someone who represents the provider's interests.
  11. "Final resolution of a health care appeal" means that a member has a final decision under the review process provided by A.R.S. Title 20, Chapter 15, Article 2.
  12. "Informal Settlement Teleconference" means a teleconference arranged by the Department that is held to settle the enrollee's qualifying surprise out-of-network bill prior to an Arbitration being scheduled. The parties to the Informal Settlement Teleconference are: (a) the enrollee or the enrollee's authorized representative; (b) the health insurer; and (c) the provider or the provider's representative.
  13. "Qualifying surprise out-of-network bill" is a surprise out-of-network bill for health care services provided on or after January 1, 2019, that is disputed by the enrollee and:
    - a. Is for health care services covered by the enrollee's health plan;
    - b. Is for health care services provided in a network health care facility;
    - c. Is for health care services performed by a provider who is not contracted to participate in the network that serves the enrollee's health plan;
    - d. The enrollee has resolved any health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, that the enrollee may have had against the insurer following the health insurer's initial adjudication of the claim;
    - e. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the surprise out-of-network bill or the health care services provided;
    - f. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee's cost sharing requirements and the insurer's allowable reimbursement, is at least \$1,000.00; and
    - g. One of the following applies:
      - i. The bill is for emergency services, including under circumstances described by A.R.S. § 20-2803(A);
      - ii. The bill is for health care services directly related to the emergency services that are provided during an inpatient admission to any network facility;
  - iii. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure;
  - iv. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure within a reasonable amount of time before the enrollee received the service;
  - v. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative chose not to sign the Disclosure;
  - vi. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative signed the Disclosure but the amount actually billed to the enrollee is greater than the estimated cost provided in the signed Disclosure.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2402. Request for Arbitration**

- A. Request for Arbitration. An enrollee may request dispute resolution of a surprise out-of-network bill by filing a timely Request for Arbitration with the Department on a Request for Arbitration form available on the Department's website.
- B. Deadline for filing a Request for Arbitration with the Department. A Request for Arbitration must be received by the Department within one year after the date of service listed on the surprise out-of-network bill. If the enrollee filed a health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, the one year deadline is tolled from the date the enrollee filed the health care appeal to the date of the final resolution of the appeal.
- C. Evaluation of the Request for Arbitration by the Department. Within 15 days after receipt of a Request for Arbitration, the Department shall do one of the following:
  1. Determine that the surprise out-of-network bill is a qualifying surprise out-of-network bill and notify the enrollee, health insurer and health care provider that the Request for Arbitration qualifies for Arbitration;
  2. Determine that the surprise out-of-network bill is not a qualifying surprise out-of-network bill and notify the enrollee of the reason for the Department's determination;
  3. Determine that the Request for Arbitration is incomplete; or
  4. Return the Request for Arbitration to the enrollee without making a determination if the enrollee's request should instead be filed as a health care appeal within the meaning of A.R.S. Title 20, Chapter 15, Article 2.

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- D.** Request for additional information for an incomplete Request for Arbitration. If the Department determines that the Request for Arbitration is incomplete, the Department may send a written request for additional information to the enrollee, health insurer, health care provider or health care provider's billing company.
- E.** Time to respond to the Department's Request for Additional Information. The enrollee, health insurer, health care provider or the health care provider's billing company shall have 15 days from the date of the request to respond to the Department's Request for Additional Information.
- F.** Failure to respond to the Department's Request for Additional Information.
1. If the enrollee fails to respond to the Department's Request for Additional Information, the Department shall deny the enrollee's Request for Arbitration.
  2. If either the health insurer or the health care provider or health care provider's billing company fail to respond to the Department's Request for Additional Information, the Department shall deem that the enrollee's Request for Arbitration qualifies for arbitration.
- G.** Receipt of Additional Information. Upon receipt of the additional information requested by the Department under subsection (D) of this Section, the Department shall determine, within seven days, whether the enrollee's Request for Arbitration qualifies for Arbitration and send the notice required under subsection (C)(1) or subsection (C)(2) of this Section, whichever applies.
- H.** Final Determination. The Department's determination whether an enrollee's Request for Arbitration qualifies for Arbitration is a final decision and not an appealable agency action within the meaning of A.R.S. § 41-1092(3). A claim that is the subject of a qualifying surprise out-of-network bill is not subject to the timely payment of claims law during the pendency of the Arbitration.
- I.** Enrollee's payment responsibility.
1. Notwithstanding any informal settlement or Arbitrator's Final Written Decision, the enrollee is responsible for only the following:
    - a. The amount of the enrollee's cost sharing requirements; and
    - b. Any amount received by the enrollee from the enrollee's health insurer as payment for the health care services at issue in a qualifying surprise out-of-network bill.
  2. A health care provider may not issue, either directly or indirectly through its billing company, any additional balance bill to the enrollee for the same health care services.
- Historical Note**  
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).
- R20-6-2403. Informal Settlement Teleconference**
- A.** Deadline to arrange the Informal Settlement Teleconference. Upon a determination that an enrollee has made a Request for Arbitration that qualifies for Arbitration, the Department shall arrange an Informal Settlement Teleconference between the parties within 30 days of notifying the enrollee that the enrollee's Request for Arbitration qualifies for Arbitration required by Section R20-6-2402(C)(1).
- B.** Notice of Informal Settlement Teleconference. At least 14 days prior to the scheduled date, the Department shall send a Notice of Informal Settlement Teleconference to the enrollee, the enrollee's authorized representative, the health insurer, the health care provider and the health care provider's representative informing them of the date, time and instructions on how to participate in the Informal Settlement Teleconference.
- C.** Health Insurer documentation. On or before the Informal Settlement Teleconference, the health insurer shall provide to the parties the enrollee's cost sharing requirements under the enrollee's health plan based on the qualifying surprise out-of-network bill.
- D.** Consequences of non-participation in the Informal Settlement Teleconference. If a party fails to participate in the Informal Settlement Teleconference, it shall be subject to the following consequences:
1. If the health insurer, provider or provider's representative fails to participate in an Informal Settlement Teleconference scheduled by the Department, the participating party may notify the Department which shall promptly schedule the Arbitration. The non-participating party shall pay the entire cost of the Arbitration.
  2. If the enrollee or the enrollee's authorized representative fails to participate in the original Informal Settlement Teleconference, the original Informal Settlement Teleconference is terminated.
  3. If the enrollee or the enrollee's authorized representative fails to participate in a rescheduled Informal Settlement Teleconference, the enrollee's Request for Arbitration is terminated.
- E.** One-time opportunity for the enrollee to reschedule the Informal Settlement Teleconference. If the enrollee or the enrollee's representative fails to participate in the Informal Settlement Teleconference originally scheduled by the Department, the enrollee may request that the Department reschedule the Informal Settlement Conference. The enrollee's request to reschedule must be received by the Department within 14 days after the originally scheduled Informal Settlement Teleconference. Failure to submit a request to the Department to reschedule the Informal Settlement Teleconference within the 14 day period terminates the enrollee's Request for Arbitration.
- F.** Notification to the Department after the Informal Settlement Teleconference. Within seven days after the date of the Informal Settlement Teleconference, the health insurer shall:
1. Notify the Department whether a settlement was reached between the parties; and
  2. If a settlement was reached, notify the Department of the terms of the settlement on a form prescribed by the Department.
- G.** Failure to settle. If the parties fail to settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the Department shall arrange for the Arbitration.
- H.** Settlement. If the parties settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the health insurer shall remit its portion of the payment to the health care provider within 30 days after the Informal Settlement Teleconference. A claim that is reprocessed by a health insurer as a result of informal settlement is not in violation of A.R.S. § 20-3102(L).
- Historical Note**  
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).
- R20-6-2404. Arbitrators**
- A.** Contracted entities. The Department shall contract with one or more persons to provide Arbitrators. The Department must have a list of at least four Arbitrators to assign to Arbitrations. The Department shall publish the list of contracted entities and a list of each entity's qualified Arbitrators on its website.

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- B. Arbitrator Qualifications.** Any person contracting with the Department must be able to provide Arbitrators who possess at least three years of experience in health care services claims.
- C. Alternative Arbitrators.** A health insurer and provider may mutually agree to use an Alternative Arbitrator if either the health insurer or the health care provider objects to an Arbitrator appointed by the Department.
- D. Appointment of an Arbitrator.**
1. The Department shall appoint an Arbitrator for each Arbitration.
  2. If the health insurer and health care provider do not agree to the Arbitrator appointed by the Department, they shall either:
    - a. Mutually agree to use an Alternative Arbitrator; or
    - b. Participate in the following procedure:
      - i. The Department shall assign three Arbitrators.
      - ii. The health insurer shall strike one Arbitrator.
      - iii. The health care provider shall strike one Arbitrator.
      - iv. If one Arbitrator remains, the Department shall appoint the remaining Arbitrator to the Arbitration.
      - v. If the health insurer and health care provider strike the same Arbitrator, the Department shall randomly assign the Arbitrator from the remaining two Arbitrators.
- C. Allowable Evidence.** The Arbitrator or Alternative Arbitrator shall allow each party to provide relevant information for evaluating the qualifying surprise out-of-network bill including:
1. The average contracted amount that the health insurer pays for the health care services at issue in the county where the health care provider performed the health care services;
  2. The average amount that the health care provider has contracted to accept for the health care services at issue in the county where the health care provider performed the services;
  3. The amount Medicare and Medicaid pay for the health care services at issue;
  4. The health care provider's direct pay rate for the health care services at issue, if any, under A.R.S. § 32-3216;
  5. Any information that would be evaluated in determining whether a fee is reasonable under title 32 and not excessive for the health care services at issue, including the usual and customary charges for the health care services at issue performed by a health care provider in the same or similar specialty and provided in the same geographic area; and
  6. Any other reliable sources of information, including databases, that provide the amount paid for the health care services at issue in the county where the health care provider performed the services.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2405. Before the Arbitration**

- A. Enrollee's duties.** Before the Arbitration, the enrollee shall:
1. Pay or make arrangements in writing to pay to the health care provider the amount stated by the health insurer in the Informal Settlement Teleconference which shall be the total amount of the enrollee's cost sharing requirements due for the health care services that are the subject of the qualifying surprise out-of-network bill.
  2. Pay to the health care provider any amount that the enrollee has received from the health insurer as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.
- B. Health insurer's duties.** Before the Arbitration, the health insurer shall remit any amount due to the health care provider if the health care insurer pays for out-of-network services directly to health care providers and the health insurer has not remitted any amounts due.
- D. Final Written Decision.** Within 10 business days following the Arbitration, the Arbitrator or Alternative Arbitrator shall issue a Final Written Decision and provide a copy to the enrollee, the health insurer, the health care provider, the health care provider's billing company (if applicable) and the health care provider's authorized representative (if applicable).
- E. Payment of the claim.** The health insurer shall remit its portion of the payment awarded by the Arbitrator or Alternative Arbitrator to the health care provider within 30 days of the date of the Final Written Decision. A claim that is reprocessed by a health insurer as a result of the Arbitration is not in violation of A.R.S. § 20-3102(L).
- F. Payment of the Costs of Arbitration.** The health insurer and health care provider shall make payment arrangements with the Arbitrator or Alternative Arbitrator to pay their respective shares of the costs of the Arbitration within 30 days after the date of the Final Written Decision. The respective shares of the costs of Arbitration are determined as follows:
1. The enrollee is not responsible for any portion of the cost of the Arbitration.
  2. The health insurer and the health care provider shall share the costs of the Arbitration equally unless one of the following exceptions applies:
    - a. The health insurer and health care provider agree to share the costs of the Arbitration in non-equal portions.
    - b. The health insurer pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.
    - c. The health care provider or the health care provider's representative pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2406. The Arbitration**

- A. Conduct of Arbitration.** An Arbitration of a qualifying out-of-network surprise bill shall be conducted:
1. Telephonically unless the parties agree otherwise;
  2. With or without the enrollee's participation;
  3. Within 120 days after the Department's Notice of Arbitration unless agreed otherwise by the parties; and
  4. For a maximum duration of four hours unless agreed otherwise by the parties.
- B. Arbitrator's Determination.** The Arbitrator or Alternative Arbitrator shall determine the amount the health care provider is entitled to receive as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.
- G. Confidentiality.** In connection with the Arbitration of a qualifying surprise out-of-network bill, all of the following apply:
1. All pricing information provided by a health insurer or health care provider is confidential.

## CHAPTER 6. DEPARTMENT OF INSURANCE

2. Pricing information provided by a health insurer or health care provider may not be disclosed by the Arbitrator, Alternative Arbitrator or any other party participating in the Arbitration.
  3. Pricing information provided by a health insurer or health care provider may not be used by anyone, except the party providing the information, for any purpose other than to resolve the qualifying surprise out-of-network bill.
  4. All information received by the Department in connection with the Arbitration is confidential and may not be disclosed to any person except the Arbitrator or Alternative Arbitrator.
- H. Arbitrator's Report. At the conclusion of each Arbitration, the Arbitrator shall produce a report to the Department that contains the following information:
    1. Date of Arbitration;
    2. Date the Arbitrator issued the Final Written Decision;
    3. Whether the parties settled the qualifying surprise out-of-network bill during the Arbitration;
    4. The initial amount billed by the health care provider;
    5. The payment amount awarded to the health care provider; and
    6. Any other information the Department may request an Arbitrator to report prior to an Arbitration.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**DEPARTMENT OF REVENUE**

Title 15, Chapter 5, Articles 6, 9-11, 13-17, 18.1, 20, 21



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 11, 2021

**SUBJECT: DEPARTMENT OF REVENUE**  
Title 15, Chapter 5, Articles 6, 9-11, 13-17, 18.1, 20 and 21, Department of Revenue - Transaction Privilege and Use Tax Section

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### Summary

\_\_\_\_\_ This Five Year Review Report (5YRR) from the Department of Revenue (Department) relates to rules in Title 15, Chapter 5, Articles 6, 9-11, 13-17, 18.1, 20, and 21, regarding the Transaction Privilege and Use Tax Section. The rules address the following:

- **Article 6: Prime Contracting Classification;**
- **Article 9: Mining Classification;**
- **Article 10: Transaction Privilege Tax - Transient Lodging Classification;**
- **Article 11: Transaction Privilege Tax - Job Printing Classification;**
- **Article 13: Sales Tax - Publishing Classification;**
- **Article 14: Transporting Classification;**
- **Article 15: Personal Property Rental Classification;**
- **Article 16: Commercial Lease Classification;**
- **Article 17: Restaurant Classification;**
- **Article 18.1: Sales of Food;**
- **Article 20: General; and**
- **Article 21: Utilities Classification.**

In the previous 5YRR for these rules, which the Council approved in September 2016, the Department proposed to amend nine rules, but did not make the amendments due to the rulemaking moratorium in place at the time. The Department notes that it did complete other amendments to the rules as outlined in Item 10 of the 5YRR.

### **Proposed Action**

The Department proposes to address the issues identified in this report by September 1, 2022.

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 states that the economic impact of the taxation regulatory scheme is derived from the statutes themselves, and not the rules adopted to interpret the application of the tax. The Department states that based on information received from Department personnel responsible for the administration of the rules under review, it believes that the economic impacts it projected at the time of prior rulemakings on these rules are accurate. Stakeholders include the Department and sellers that are responsible for the collection and payment of the transaction privilege tax to the Department.

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 probable benefits of these rules outweigh the probable costs of the rule, and the rules impose the least burden and costs to regulated persons.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department states that the rules are generally clear, concise, and understandable. However, it identifies six rules in Item 6 of the 5YRR that do not conform to existing rulewriting standards.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department indicates that certain rules identified in Item 4 of the 5YRR contain incorrect or outdated references to a state statute or rule.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department indicates that certain rules identified in Item 3 of the 5YRR are not effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced as written.

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

The Department states that there are no corresponding federal laws to the rules under review. The rules are based on state law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that no rules adopted after July 29, 2010 require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

Council staff finds that the Department conducted an adequate review of the rules pursuant to A.R.S. § 41-1056(A). Council staff notes that some of the needed amendments to the rules could be addressed through expedited rulemaking. While Council staff recommends approval of this report, Council staff encourages the Council to discuss with the Department whether or not the amendments can be completed sooner than its proposed September 1, 2022 timeframe.

# STATE OF ARIZONA

Department of Revenue



May 27, 2021

*Douglas A. Ducey*  
**Governor**

*Robert Woods*  
**Director**

**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: Department of Revenue, A.A.C. Title 15, Chapter 5, Articles 6, 9 through 11, 13 through 17, 18.1, 20 and 21, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Department of Revenue for A.A.C. Title 15, Chapter 5, Articles 6, 9 through 11, 13 through 17, 18.1, 20 and 21, which is due on May 31, 2021.

The Department of Revenue hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Ranjana Burke at [RBurke@azdor.gov](mailto:RBurke@azdor.gov).

Sincerely,

*Robert M. Woods*

Robert M. Woods (May 26, 2021 16:55 PDT)

Robert Woods  
Director

**DEPARTMENT OF REVENUE**

**5 YEAR REVIEW REPORT**

**A.A.C. Title 15 Revenue**

**Chapter 5 Department of Revenue**

**Transaction Privilege and Use Tax**

**Articles 6, 9 through 11, 13 through 17, 18.1, 20 and 21**

**May 27, 2021**

**1. Authorization of the rule by existing statutes**

All of the rules are generally authorized by A.R.S. § 42-1005, which provides that the Director (“Director”) of the Department of Revenue (“Department”) may make administrative rules as he deems necessary and proper to effectively administer the Department and enforce Arizona Revised Statutes (“A.R.S.”) Title 42 and Title 43.

**Specific Authorization for the Rules:**

1. A.R.S. §§ 42-5006 and 42-5007 are the specific statutes upon which the following rules are based:

R 15-5-601            Taxpayer Bonds for Contractors

2. A.R.S. § 42-5072 is the specific statute upon which the following rules are based:

R15-5-901            Definitions

R15-5-902            General

R15-5-904            Manufacturing or Processing Service Charges

R15-5-905            Products Shipped Out of Arizona

R15-5-908            Actual Freight Paid

3. A.R.S. § 42-5070 is the specific statute upon which the following rules are based:

R15-5-1001          Application of the Definition of Transient for Purposes of Taxation under the  
Transient Lodging Classification

R15-5-1002 Activities in Addition to Providing Lodging

R15-5-1003 Providing Lodging to Government Agencies

4. A.R.S. § 42-5066 is the specific statute upon which the following rules are based:

R15-5-1101 Definitions

R15-5-1102 Printer's Sale of Printing

R15-5-1106 Sales of Materials to a Printer

R15-5-1111 Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112 Sale of Image Developing

5. A.R.S. § 42-5065 is the specific statute upon which the following rules are based:

R15-5-1302 General

R15-5-1303 Definitions

R15-5-1304 Printing Costs

R15-5-1305 Out-of-state distribution

6. A.R.S. § 42-5062 is the specific statute upon which the following rules are based:

R15-5-1404 Excess Baggage Charges

R15-5-1405 Demurrage Charges

R15-5-1408 Rental of Aircraft

7. A.R.S. § 42-5071 is the specific statute upon which the following rules are based:

R15-5-1502 General

R15-5-1503 Sourcing of Leased Tangible Personal Property

R15-5-1506 Rental of Tangible Personal Property to Government Agencies

R15-5-1507 Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit  
Organizations

R15-5-1512 Lease--Purchase Agreements

8. A.R.S. § 42-5069 is the specific statute upon which the following rules are based:

R15-5-1601 Definitions

- R15-5-1602 Casual Leasing Activity
- R15-5-1604 Gross Income
- R15-5-1605 Rental to Government Agencies
- R15-5-1606 Nonprofit Organizations
- R15-5-1608 Commercial property -- storage facilities
- R15-5-1609 Commercial property -- licensee agreements

9. A.R.S. § 42-5074 is the specific statute upon which the following rules are based:

- R15-5-1704 Providing Food or Drink to Government Agencies
- R15-5-1705 Amusement Devices
- R15-5-1706 Cover Charges
- R15-5-1708 Gratuities (Tips)
- R15-5-1709 Coupon Redemption

10. A.R.S. §§ 42-5101 through 5106 are the specific statutes upon which the following rules are based:

- R15-5-1860 Definitions
- R15-5-1862 Restaurant food sales

11. A.R.S. § 41-5024 is the specific statute upon which the following rule is based:

- R15-5-2002 Liability for Transaction Privilege Tax

12. A.R.S. §42-5044 is the specific statute upon which the following rule is based:

- R15-5-2003 Applicability of Provisions to Marketplace Facilitators and Remote Sellers
- R15-5-2009 Transactions Between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers

13. A.R.S. §§ 42-5019 and 5020 are the specific statutes upon which the following rule is based:

- R15-5-2004 Multi-Location and Multi-Business Taxpayers

14. A.R.S. § 42-5017 is the specific statute upon which the following rule is based:

- R15-5-2007 Credit for Accounting and Reporting Expenses

15. A.R.S. § 42-5012 is the specific statute upon which the following rule is based:

R15-5-2010 Transactions Between Affiliated Persons

16. A.R.S. §§ 42-1005 and 5003 are the specific statute upon which the following rule is based:

R15-5-2011 Bad Debts

17. A.R.S. § 42-5063 is the specific statute upon which the following rules are based:

R15-5-2104 Interstate and Foreign Sales

R15-5-2105 Locally Delivered Utilities

R15-5-2106 Compressed and Bottled Liquids

R15-5-2107 Sales to Irrigation Districts

R15-5-2110 Security Deposits

2. **The objective of each rule:**

Rule	Objective
<b>R15-5-601</b>	<i>Taxpayer Bonds for Contractors:</i> This rule informs taxpayers of the bonding requirements for contractors.
<b>R15-5-901</b>	<i>Definitions:</i> This rule defines terms used in the rules governing the mining classification under Article 9.
<b>R15-5-902</b>	<i>General:</i> This rule provides general information regarding taxation under the mining classification.
<b>R15-5-904</b>	<i>Manufacturing or Processing Service Charges:</i> This rule provides guidance regarding the taxability of manufacturing or processing service charges for taxpayers engaged in mining businesses.
<b>R15-5-905</b>	<i>Products Shipped Out of Arizona:</i> This rule provides guidance regarding the determination of the tax base under the mining classification for nonmetalliferous mineral products that are shipped out of state without being sold.
<b>R15-5-908</b>	<i>Actual Freight Paid:</i> This rule provides information regarding the deduction of

	actual freight costs incurred by a mining business in connection with a sale.
<b>R15-5-1001</b>	<i>Application of the definition of Transient for Purposes of Taxation under the Transient Lodging Classification:</i> This rule explains that obtaining lodging at a lodging facility for 30 or more consecutive days is not subject to tax under the transient lodging classification.
<b>R15-5-1002</b>	<i>Activities in Addition to Providing Lodging:</i> This rule explains that a transient lodging facility's income from providing meals or room service is subject to tax under the restaurant classification and income from the sale of tangible personal property is subject to tax under the retail classification.
<b>R15-5-1003</b>	<i>Providing Lodging to Government Agencies:</i> This rule explains that rentals of transient lodging facilities to any government agency or its employees are taxable.
<b>R15-5-1101</b>	<i>Definitions:</i> This rule defines terms used in the rules governing the job printing classification.
<b>R15-5-1102</b>	<i>Printer's Sale of Printing:</i> This rule explains that all of a printer's costs or expenses of filling a customer's printing order are subject to tax under the job printing classification.
<b>R15-5-1106</b>	<i>Sale of Materials to a Printer:</i> This rule explains that sales to a printer of materials that do not become an ingredient or component part of a printing are subject to tax under the retail classification unless otherwise exempt
<b>R15-5-1111</b>	<i>Miscellaneous Costs of a Printer are not Deductions:</i> This rule informs printers that they may not deduct the cost of subletting job printing activities or the cost of labor or materials from the job printing tax base.
<b>R15-5-1112</b>	<i>Sale of Image Developing:</i> This rule informs taxpayers when the sale of image developing is subject to tax and when it is not subject to tax.

<b>R15-5-1302</b>	<i>General:</i> This rule provides general information regarding the imposition of tax on the business of publishing.
<b>R15-5-1303</b>	<i>Definitions:</i> This ruled defines terms used in the rules governing the publishing classification.
<b>R15-5-1304</b>	<i>Printing Costs:</i> This rule informs taxpayers that the cost of printing a publication is not deductible from the tax base.
<b>R15-5-1305</b>	<i>Out-of-state distribution:</i> This rule informs taxpayers that income from publications that are published in this state and distributed out-of-state is taxable.
<b>R15-5-1404</b>	<i>Excess Baggage Charges:</i> This rule informs taxpayers when income from charges for excess baggage is subject to tax and when it is not subject to tax under the transporting classification.
<b>R15-5-1405</b>	<i>Demurrage Charges:</i> This rule informs taxpayers when income from demurrage charges is subject to tax and when it is not subject to tax under the transporting classification.
<b>R15-5-1408</b>	<i>Rental of Aircraft:</i> This rule informs taxpayers when income from transporting by aircraft is taxable under the transporting classification and when it is taxable under the personal property rental classification
<b>R15-5-1502</b>	<i>General:</i> This rule informs taxpayers that gross income derived from the renal of all types of tangible personal property is subject to tax under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.
<b>R15-5-1503</b>	<i>Sourcing of Leased Tangible Personal Property:</i> This rule informs taxpayers when leased tangible personal property is subject to tax and when it is not subject to tax under the personal property classification. This rule also informs

	taxpayers that gross receipts from leasing or renting tangible personal property are not taxable if the property is removed from the state and used exclusively outside the state.
<b>R15-5-1506</b>	<i>Rental of Tangible Personal Property to Government Agencies:</i> This rule explains that the rental of tangible personal property to the United States Government, the State of Arizona, or other governmental subdivisions is subject to tax under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.
<b>R15-5-1507</b>	<i>Rental of Tangible Personal Property to Schools, Churches, and other Nonprofit Organizations:</i> This rule explains that the rental of tangible personal property to a school, church or other nonprofit organization is subject to tax under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.
<b>R15-5-1512</b>	<i>Lease – Purchase Agreement:</i> This rule explains when income from a lease agreement that includes an option to purchase the tangible personal property is taxable under the personal property rental classification and when it is taxable under the retail classification.
<b>R15-5-1601</b>	<i>Definitions:</i> This rule defines terms used in the rules governing the commercial lease classification.
<b>R15-5-1602</b>	<i>Casual Leasing Activity:</i> This rule explains the historical tax treatment of casual rentals of real property.
<b>R15-5-1604</b>	<i>Gross Income:</i> This rule illustrates the types of income that are taxable under the commercial lease classification.
<b>R15-5-1605</b>	<i>Rental to Government Agencies:</i> This rule explains that the rental of real property to the United States Government, the State of Arizona, or any other

	governmental agency is subject to tax under the commercial lease classification unless otherwise exempt.
<b>R15-5-1606</b>	<i>Nonprofit Organizations:</i> This rule explains that the rental of real property by or to a nonprofit organization is subject to tax under the commercial lease classification unless otherwise exempt.
<b>R15-5-1608</b>	<i>Commercial Property - - storage facilities:</i> This rule informs taxpayers when the rental of storage facilities is subject to tax and when it is not subject to tax under the commercial lease classification.
<b>R15-5-1609</b>	<i>Commercial Property – licensee agreements:</i> This rule informs taxpayers that a license to use real property is not a taxable lease under the commercial lease classification.
<b>R15-5-1704</b>	<i>Providing Food or Drink to Government Agencies:</i> This rule explains that a restaurant’s gross proceeds of sales or gross income from sales of food or drink to the United States Government, the State of Arizona or its political subdivisions, or any other governmental agency or its employees, is subject to tax under the restaurant classification unless otherwise exempt.
<b>R15-5-1705</b>	<i>Amusement Devices:</i> This rule informs taxpayers that a restaurant’s income from the operation of an amusement device is subject to tax under the amusement classification.
<b>R15-5-1706</b>	<i>Cover Charges:</i> This rule informs taxpayers that a restaurant’s income from a cover charge or other minimum charge is subject to tax under the restaurant classification.
<b>R15-5-1708</b>	<i>Gratuities (Tips):</i> This rule informs taxpayers when and under what circumstances gratuities are deductible under the restaurant classification.
<b>R15-5-1709</b>	<i>Coupon Redemption:</i> This rule informs the taxpayer how coupon redemption is

	taxed under the restaurant classification.
<b>R15-5-1860</b>	<i>Definitions:</i> The rule defines terms used in the rules governing the sale of food.
<b>R15-5-1862</b>	<i>Restaurant food sales:</i> This rule provides guidance regarding the taxation of food sales by a restaurant, by a retailer that also operates a restaurant, or by a delicatessen business.
<b>R15-5-2001</b>	<i>Definitions:</i> This rule defines terms used in Title 15, Chapter 5 of the Administrative Code.
<b>R15-5-2002</b>	<i>Liability for Transaction Privilege Tax:</i> This rule informs taxpayers that the vendor is ultimately liable for the transaction privilege tax, regardless of whether or not the vendor passes the economic burden of the tax to the customer.
<b>R15-5-2003</b>	<i>Applicability of Provisions to Marketplace Facilitators and Remote Sellers:</i> This rule informs taxpayers that Articles 1, 20 and 22 of Title 15, Chapter 5 of the Administrative Code apply to marketplace facilitators and remote sellers who meets the threshold requirements.
<b>R15-5-2004</b>	<i>Multi-location and Multi-business taxpayers:</i> This rule informs taxpayers that a taxpayer with multiple businesses shall maintain separate records for each business. In addition, a taxpayer engaging in businesses under more than one business classification shall maintain books and records reflecting the income of each classification separately; otherwise, the tax is imposed at the highest rate applicable to a classification under which a taxpayer is doing business.
<b>R15-5-2007</b>	<i>Credit for Accounting and Reporting Expenses:</i> This rule explains the proper application of the credit that is allowed against taxes for expenses incurred by the taxpayer in accounting and reporting the taxes.
<b>R15-5-2009</b>	<i>Transactions Between Affiliated Persons Who Are Marketplace Facilitators,</i>

	<i>Marketplace Sellers, or Remote Sellers:</i> This rule informs the taxpayer how to calculate the threshold between a marketplace facilitator and remote seller when affiliated entities are involved.
<b>R15-5-2010</b>	<i>Transactions Between Affiliated Persons:</i> This rule informs taxpayers that the tax shall be computed on the constructive purchase price when a transaction is between affiliated persons and the facts and circumstances indicate that the reported gross receipts from the transaction are not indicative of the fair market value of the transaction.
<b>R15-5-2011</b>	<i>Bad Debts:</i> This rule explains the circumstances under which a deduction from gross receipts may be taken for bad debts.
<b>R15-5-2104</b>	<i>Interstate and Foreign Sales:</i> This rule provides guidance regarding the determination of the tax base under the utilities classification for sales of electricity, gas or water delivered through transmission lines or pipelines to a point in another state or country from a point in this state and used outside this state.
<b>R15-5-2105</b>	<i>Locally Delivered Utilities:</i> This rule provides guidance regarding the determination of the tax base under the utilities classification for sales of electricity, gas or water produced outside this state that is delivered through transmission lines or pipelines to a point in this state for use in this state.
<b>R15-5-2106</b>	<i>Compressed and Bottled Liquids:</i> This rule informs taxpayers that the sale of bottled gases or bottled water is subject to tax under the retail classification unless otherwise exempt.
<b>R15-5-2107</b>	<i>Sales to Irrigation Districts:</i> This rule informs taxpayers that a person engaged in business under the utilities classification is subject to tax under the utilities classification on income from producing and furnishing or furnishing electricity

	or gas to an irrigation district unless otherwise exempt.
<b>R15-5-2110</b>	<i>Security Deposits:</i> This rule explains when customer deposits that are held as security for payment of utility billings are recognized as income and subject to tax under the utility classification.

3. **Are the rules effective in achieving their objectives?** Yes  No

<b>R15-5-902</b>	<i>General:</i> A.R.S § 42-5061 (A)(27) was amended in 2015 as a result of amendments to A.R.S § 42-5075 dealing with the prime contracting classification. It allows an exemption for retailers on the income derived from the sale of materials incorporated into modification projects and for materials used in MRRA projects. This had the effect of indirectly amending A.R.S § 42-5072(B) which provides an exemption from the mining classification for income derived from sales in A.R.S § 42-5061 (A)(27). However, R15-5-902(B) has not been amended since the statutory change. Therefore, this rule is no longer effective as some of the information contained in the rule is obsolete.
<b>R15-5-1302</b>	<i>General:</i> This rule has not been amended since 1981 and the statute has been amended. This rule is no longer effective as much of the information contained in it is obsolete. In addition, this rule contains definitions that would be better situated under the rule that provides definitions for terms used in the specific rules.
<b>R15-5-1605</b>	<i>Rental to Government Agencies:</i> This rule is generally effective in so far as it contains current information. However, it is partially ineffective because the information contained in the rule is obsolete in subsection B.
<b>R15-5-1860</b>	<i>Definitions:</i> This rule is generally effective in meeting its objective. However, the definition of the term “food for consumption on the premises” erroneously states that frozen sandwiches are included in the term “hot and cold sandwiches.”

<b>R15-5-1862</b>	<i>Restaurant food sales:</i> This rule is generally effective in meeting the objective of the rule. However, the rule does not address businesses that sell sealed and prepacked products when purchased cannot be eaten on the premises.
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4. **Are the rules consistent with other rules and statutes?** Yes No X

The following rules are consistent with state and federal statutes and rules. However, each contains an incorrect or outdated reference to a state statute or rule:

<b>R15-5-902(B)</b>	<i>General:</i> This rule is no longer consistent with the statute since the statute has been amended. A.R.S § 42-5061 (A)(27) was amended in 2015 as a result of amendments to A.R.S § 42-5075 dealing with the prime contracting classification. It allows an exemption for retailers on the income derived from the sale of materials incorporated into modification projects and for materials used in MRRA projects. This had the effect of indirectly amending A.R.S § 42-5072(B) which provides an exemption from the mining classification for income derived from sales in A.R.S § 42-5061 (A)(27). However, R15-5-902(B) has not been amended since the statutory change. Therefore, this rule is no longer consistent with statute as some of the information contained in the rule is obsolete.
<b>R15-5-1101</b>	<i>General:</i> This rule is generally clear, concise and understandable; however, it contains outdated statutory references. The references to qualifying health care organization and qualifying hospital references are outdated.
<b>R15-5-1302</b>	<i>General:</i> This rule has not been amended since 1981 and the statute has been amended several times. Therefore, the rule is no longer consistent with the statute. In addition, subsection C references a rule that has since been repealed.
<b>R15-5-1303</b>	<i>Definitions:</i> This rule contains information other than definitions. Subsection C is not a definition but explains that sales of books are subject to tax under the retail

	classification. The rule references the incorrect Article 18 instead of the correct Article 1.
<b>R15-5-1604</b>	<i>Gross Income:</i> This rule is inconsistent with a statutory change made in A.R.S. § 44-302(A)(15) that provides a three-year abandonment period for a refundable deposit instead of five years.

5. **Are the rules enforced as written?** Yes  No

6. **Are the rules clear, concise, and understandable?** Yes No

The following rules are generally clear, concise, and understandable. However, these rules contain language that does not conform to existing rulewriting standards:

<b>R15-5-1303</b>	Definitions
<b>R15-5-1304</b>	Printing Costs
<b>R15-5-1305</b>	Out-of-state distribution
<b>R15-5-2010</b>	Transactions between Affiliated Persons
<b>R15-5-2011</b>	Bad Debts
<b>R15-5-2022</b>	Liability for Transaction Privilege Tax

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

Generally, the economic impact of the taxation regulatory scheme is derived from the statutes themselves, and not the rules adopted to interpret the application of the tax. It is only when a rule imposes the requirement to prepare a form or submit documentation, not specifically required by statute, that the rule has an economic impact. The transaction privilege tax is levied on income derived by the seller, who is legally allowed to pass the economic expense of the tax on to the purchaser. However, the seller is

ultimately liable to Arizona for the tax. In this report, “taxpayer” means the seller for transaction privilege tax purposes.

#### 1. Rules in A.A.C. Title 15, Chapter 1, Article 6

R15-5-601 was renumbered from R15-10-202 (Supp. 94-1). R15-10-202 was adopted in 1989 and amended by final rulemaking effective in 2018 (Supp. 18-1). The rule established five different bond amounts and the types of contractors that would be required to post each type of bond. The requirement for a bond is imposed by A.R.S. §§ 42-5006 and 42-5007 and applies primarily to out of state contractors required to be licensed under the prime contracting TPT statute. The Department anticipated incurring costs in notifying taxpayers of the required bond. However, the Department expected to benefit as only businesses seriously pursuing contracting and manufactured housing businesses would apply for licenses. It was believed that the board of contractors may have to increase compliance investigations because contractors might try to avoid licensing for transaction privilege tax due to the increased cost of licensing. Processing bonds was expected to take time, and therefore applicants were now going to have to plan ahead. Finally, it was anticipated that consumers would benefit through increased collection of transaction privilege tax from a class of business that traditionally had not paid its fair share. The cost of items sold by contractors was thought to possibly increase if the additional cost of the bond was passed through to customers.

In 2015, the prime contracting classification changed as a result of amendments passed by the Arizona Legislature. One major change is the taxable activity under the prime contracting classification. A contractor is not required to obtain (or renew) a prime contracting TPT license if its business activities are limited to contracts for the maintenance, repair, replacement, or alteration (“MRRA activities”) of an existing property with either: (a) the owners of real property or (b) the owners of the improvements to real property. Modification projects remain taxable under the prime contracting classification. Thus, out of state contractors conducting contracting activity which now requires a bond may be reduced because of this change in statute. Because the rule only applies to out of state taxpayers, those taxpayers will likely experience some benefit.

In 2018, the Department reduced heavy construction contractors that build bridges, tunnels, and elevated highways surety bond requirements reduced from \$102,000 to \$22,000. This reduction reduced economic barriers for construction contractors. Therefore the rule was amended to accommodate this change.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

## 2. Rules in A.A.C. Title 15, Chapter 5, Article 9

The majority of the rules in article 9 under the mining classification were amended effective July 18, 2000. Two rules were repealed and one was renumbered.

An economic impact statement was prepared for the article as a whole as a consequence of the rules affecting the Department, other state agencies, private entities, consumers and small business.

The Department considered repealing rather than amending the rules. However, it was determined that taxpayers in the mining business would be better served by amending all of the rules under the mining classification to provide clarification, remove conflicts with statute, and to conform the language to the Secretary of State's guidelines.

Overall it was believed the Department would incur minimal costs in meeting the Administrative Procedure Act (APA) requirements. Over time it was anticipated that Department personnel would experience time and cost savings in answering inquiries from the public since the rules would be clear, concise and understandable. The removal of references to metal mining that conflicted with the statute was one of the main changes behind this benefit.

The Secretary of State and The Governor's Regulatory Review Council staff were expected to incur costs in noticing, printing, reviewing and analyzing the rules. It was expected that public and private entities could incur a minimal cost in obtaining copies, while benefiting from the rules by having definitive requirements and procedures to follow.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, it was

projected that there would be no direct or indirect impact on consumers.

Small businesses were expected to see the same consequences as private entities. Any additional costs were anticipated to be temporary, with no undue hardship in the correct application of the tax law to each business setting.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments, repeals and renumbering are accurate.

### 3. Rules in A.A.C. Title 15, Chapter 5, Article 10

Two of the rules in Article 10 were amended in 1995 and the third rule was adopted at that time. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. The Department should experience time and cost savings in answering inquiries from the public because the rules would provide clarification.

The amendment of R15-5-1001 was expected to benefit operators of lodging facilities both directly and indirectly by providing a detailed explanation of the application of the definition of "transient" which had caused much confusion in the industry.

The amendment of R15-5-1002 was thought to possibly increase the record keeping responsibilities of the taxpayers operating lodging facilities that also provide meals. However, the clear guidance the rule provided would aid the taxpayer in meeting the additional responsibilities.

The adoption of R15-5-1003 was expected to benefit operators of lodging facilities both directly and indirectly by providing specific information regarding an area that has been the cause of confusion in the past.

Although the operator of a lodging facility is the person ultimately liable for the transaction

privilege tax, the burden of the tax may be passed on to the person obtaining lodging. Therefore, many inquiries regarding the tax consequences of a transaction are received from persons obtaining lodging. Such consumers were expected to benefit from easily accessible information regarding the application of tax under the transient lodging classification. Specifically, companies that obtain lodging for long periods of time for employees or for meetings and conventions would benefit by having detailed information to aid in dealing with lodging facilities.

The amendment and adoption of these rules were not anticipated to cause any additional reporting or compliance requirements for small businesses. However, an increase of record keeping responsibilities was possibly expected for taxpayers operating lodging facilities that provide lodging and meals.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and the repeal are accurate.

#### 4. Rules in A.A.C. Title 15, Chapter 5, Article 11

Effective February 6, 2006, R15-5-1101, R15-5-1102 and R15-5-1112 were adopted, R15-5-1106 and R15-5-1111 were amended, and five rules were repealed. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

The Department expected to incur minimal costs in meeting the APA rulemaking requirements and changing the instructions in related pamphlets, brochures, and notices that are distributed to the public. The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that were addressed by the rule.

Political subdivisions of this state were expected to incur minimal costs in noticing and printing the new rule for the public as they deemed necessary.

The Department did not anticipate any effect on the revenues or payroll expenditures of employers who were subject to the proposed rulemaking.

The rulemaking clarified the nature of activities that are subject to tax under the retail classification and those that are taxable under the job printing classification, both of which have a tax rate of 5.6 percent. Those businesses that did not have a clear understanding of the job printing classification as it relates to electronic-based business activities may have been unclear about their tax liability, or alternately, remitted tax under the retail classification rather than the job printing classification. Such businesses may have incurred additional costs to remit and report the correct amount of tax due on various electronic-based forms of printing discussed in the amendments, or alternately, they may have initially incurred administrative costs, to the extent that such businesses would have to make adjustments to their internal recordkeeping and reporting methods.

The Department anticipated no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

Transaction privilege tax is imposed on the privilege of doing business in Arizona and is a liability upon sellers and vendors, rather than the final consumers. Nevertheless, the amount of the tax is typically passed on to consumers and they therefore are affected, albeit indirectly, by the final rule. The Department anticipated there would be no change to the amount of Arizona transaction privilege tax passed on to persons for whom the taxable activities are performed. As stated above, the state tax rates for activities subject to tax under the retail classification and the job printing classification are the same, and consumers would thus not perceive a change in the amount of tax passed on to them by vendors.

The Department predicted that there would be either no impact or a minimal positive impact on state revenue derived from transaction privilege tax proceeds collected. The minimal positive impact would be the result of businesses providing electronic-based job printing services that were unaware of their tax liability under the job printing classification.

The Arizona State Legislature amended A.R.S. § 42-5066, effective September 21, 2006 to provide a specific deduction in the job printing classification for postage and freight charges. The Department amended its rule on a printer's sale of printing to account for the new exemption. Effective February 6, 2007, R15-5-1102 was amended. An economic impact statement was prepared for the Article at the time.

Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers questioning the apparent contradiction between the language of the previous rule and the postage and freight charge deduction provided by the statute.

The Department anticipated that businesses would benefit from the new statutory deduction and clear guidance provided by the rule.

Although the underlying introduction of a new statutory deduction was anticipated to have a minimal negative effect on transaction privilege tax collected under the job printing classification, the Department did not predict that the amendment of the rule would have an effect on state revenues.

The statutory change that this rule responded to for state transaction privilege tax purposes did not impact the local job printing taxes imposed by political subdivisions in Arizona.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and repeal are accurate.

#### 5. Rules in A.A.C. Title 15, Chapter 5, Article 13

The rules in Article 13 were adopted in 1976. R15-5-1302 was amended in 1981. There is no documentation available regarding the anticipated economic impact of the rules.

It was believed that any cost incurred by the Department and other state agencies would be minimal. The amendment of the rules would result in time and cost savings for the Department because the clarification would reduce the number of inquiries from taxpayers.

Taxpayers were not expected to incur any expense as a result of the amendment of the rules. The Department anticipated that Taxpayers would benefit from the amended rules by having definitive requirements and procedures to follow.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the

consumer, the Department did not believe that there would be a direct or indirect impact on consumers.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and the repeal are accurate.

#### 6. Rules in A.A.C. Title 15, Chapter 5, Article 14

All rules in Article 14 were amended effective June 12, 2000. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses.

Overall, it was believed that any costs incurred by the Department, other state agencies and taxpayers would be minimal. The Department anticipated experiencing time and cost savings in answering inquiries from the public since the rules would be clear, concise, and understandable. Taxpayers would benefit from the rules by having accurate and definitive requirements and procedures to follow. Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, the Department did not expect a direct or indirect impact on consumers.

The amendment of the rules was not expected to cause any additional reporting or compliance requirements for small businesses. Small businesses would benefit both directly and indirectly from the increased clarity of the transporting classification with the amendment of the rules.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

#### 7. Rules in A.A.C. Title 15, Chapter 5, Article 15

With the exception of A.A.C. R15-5-1503, all of the rules in Article 15 were amended in 2000. An economic impact statement was prepared at that time.

Overall, it was believed that any cost incurred by the Department and other state agencies would

be minimal. The Department would experience time and cost savings in answering inquiries from the public because the existing rules were not clear or concise and some of the rules contained obsolete or repetitive information. The rule amendments would reduce the need for Department personnel to explain to taxpayers the requirements and procedures addressed in the rules.

Taxpayers engaged in business under the personal property rental classification were not expected to incur any expense in the amendment of the rules. Taxpayers would benefit from the rules by having accurate and definitive requirements and procedures to follow.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, the Department did not expect any direct or indirect impact on consumers.

The amendments do not impose any additional fees, taxes, or expenditures and thus, were expected by the Department to have a very minimal revenue impact, if any, on the general fund.

The amendment of the rules caused no additional reporting or compliance requirements for small businesses. Small businesses were expected to benefit both directly and indirectly from the increased clarity of the rules.

With regard to A.A.C. R15-5-1503, it was amended effective September 11, 2004. The Department expected to incur minimal costs in meeting the APA rulemaking requirements and changing the instructions in related pamphlets, brochures, and notices that were distributed to the public. The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by the rule.

The Secretary of State was expected to incur minimal costs in noticing and printing the new rule. Political subdivisions of this state were expected to incur minimal costs in noticing and printing the new rule for the public if the sourcing provisions for personal property leases and rentals of a particular subdivision differed from those in the rule.

Taxpayer-lessors were expected to incur costs associated with: (a) noticing and retraining personnel on the new sourcing provisions of the rule and (b) maintaining adequate records on the location of leased property to ensure that gross receipts from property that has been taken out of Arizona for exclusive use

outside the state are not taxed if such records are not already maintained as part of their business. If lessors used software that automatically calculated tax liability for leases and rentals, there may have been costs associated with adjusting the formulas used by the application.

The rule was nevertheless expected to benefit taxpayers by providing a “bright-line” standard for determining the location of leasing activity based on information that is already currently being collected and reported to the Department or other state agencies by lessors. The Department expected taxpayer-lessors to further benefit from clarification that gross receipts derived from leases and rentals of property that had been taken out of Arizona and used exclusively outside of the state are not subject to transaction privilege tax.

The Department anticipated that benefits to taxpayers would vary greatly depending on, among other factors: the size of a lessor’s business operation, the sophistication of its operation, complexity of its leasing or rental transactions, and quality of its records as maintained.

The Department anticipated no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

The Department believed that small businesses would actually bear lower compliance costs under the final rule because of the simplification of the sourcing of leases and rentals. Most small businesses were believed likely to be single business location enterprises that would benefit from the ease in sourcing leases and rentals to their business addresses.

Transaction privilege tax is imposed on the privilege of doing business in Arizona and is a liability upon lessors, rather than lessees. Nevertheless, the amount of the tax is typically passed on to lessees and they therefore are affected (albeit indirectly) by the final rule. There was no change to the amount of Arizona transaction privilege tax passed to lessees of property leased and used in the state, but lessees of property taken out of state that were intended for such out-of-state use at the inception of the lease will find that no liability for tax to Arizona attaches to those leases. This result is a benefit to those consumers in determining any sales or use tax liability personally owing on their leases or rentals.

The state tax rate at that time for the personal property rental classification was 5.6%. The

Department predicted that there would be a moderate negative impact on state revenue derived from transaction privilege tax proceeds collected from leases and rentals that are taken out of Arizona for exclusive use outside of the state.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

#### 8. Rules in A.A.C. Title 15, Chapter 5, Article 16

In 1995, R15-5-1601, R15-5-1602, R15-5-1605 and R15-5-1606 were amended and R15-5-1604 was adopted. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. It was expected that the Department would experience time and cost savings in answering inquiries from the public because the rules provided clarification.

The rule action under the commercial lease classification did not involve any increase in reporting or compliance requirements for lessors of real property. Lessors of real property were expected to benefit both directly and indirectly from the increased clarity of the concepts of the commercial lease classification.

The adoption of R15-5-1604 was expected to benefit lessors of real property by providing an enumeration of taxable income sources customarily received under the commercial lease classification.

Although the lessor of real property is the person ultimately liable for the tax, the burden of the tax may be passed on to the lessee. Therefore, many questions are received from the lessees. The adoption and amendment of the rules was expected to benefit lessees of real property by providing accurate and up to date information regarding the application of tax.

The adoption and amendment of the rules was expected to cause no additional reporting or compliance requirements for small businesses.

With regard to A.A.C. R15-5-1608 and R15-5-1609, they have been in effect since sometime prior to 1976. There was no economic, small business, and consumer impact statement (“EIS”) requirement for administrative rules adopted prior to 1981. As such, the Department has never prepared an economic analysis for these rules. The rules clarify the tax treatment of storage facilities and real property licensee agreements thereby reducing the need for Department personnel to explain the issues addressed in the rules. This results in time and cost savings to the Department, lessors and lessees. In addition, the rules interpret the statutory provision and do not impose any additional requirements not listed in statute.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

#### 9. Rules in A.A.C. Title 15, Chapter 5, Article 17

All of the rules in Article 17 were amended effective December 16, 1997. An economic impact statement was prepared for the Article at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small businesses. The Department amended A.A.C. R15-5-1708 to update and provide guidance for gratuities. A new economic impact statement was not prepared for this amendment. The amended was effective November 6, 2020.

Overall, it was believed that any costs incurred by the Department, other state agencies and taxpayers would be minimal. The Department would experience time and cost savings in answering inquiries from the public since the rules would be clear, concise, and understandable. Taxpayers would benefit from the rules by having accurate and definitive requirements and procedures to follow. Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, i.e., the consumer, there was expected to be no direct or indirect impact on consumers.

The amendment of the rules was not expected to cause any additional reporting or compliance requirements for small businesses. Small businesses were expected to benefit both directly and indirectly from the increased clarity of the restaurant classification with the amendment of the rules.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

#### 10. Rules in A.A.C. Title 15, Chapter 5, Article 18.1

R15-5-1860 and R15-5-1862 were amended and adopted effective October 15, 1980. At the request of Governor Review Council staff, R15-5-1860 was amended to include changes to conform with the changes to the statute which included the removal of “a mobile facility, motor vehicle or other such conveyance” from the list of retailers permitted to sell tax exempt food. The effective date of January 14, 2019. There was no EIS requirement for administrative rules adopted in 1980 or the amendment requested in 2019, As such, the Department has never prepared an economic analysis for these rules.

These rules clarify the Department’s policies and procedures and thus, reduce the need for Department personnel to explain to licensees the requirements and procedures addressed in the rules. This results in time and cost savings to the Department, food retailers, and restaurant patrons. Restaurant and retail licensees, vendors and food workers also become more knowledgeable and well-versed in policies and procedures relating to tax-exempt food and taxable food operations. As such, grocery and restaurant patrons would experience less taxing inconsistency among restaurants, food vendors and retail operations. In addition, R15-5-1860 and R15-5-1862 interpret statutory provisions and do not impose any additional requirements not listed in statute.

Since the transaction privilege tax is imposed on the vendor, rather than the purchaser, there would be no direct or indirect impact on consumers beyond what currently existed. Small businesses were expected to see the same consequences as private entities when applying rules applicable to selling taxable or tax-exempt food. Any additional costs were anticipated to be temporary, with no undue hardship in the correct application of the tax law to each business setting.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

## 11. Rules in A.A.C. Title 15, Chapter 5, Article 20

R15-5-2001, R15-5-2002, R15-5-2004, R15-5-2010, and R15-5-2011 were all amended in 1993. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

Overall, it was believed that any cost incurred by the Department and other state agencies would be minimal. The amount of time spent by the Department responding to correspondence and phone calls would be reduced because of increased public awareness and understanding due to the clarification of the rules.

The Department did not anticipate substantial direct or indirect costs incurred by taxpayers as a result of the amendments, although initially it was thought there may be temporary indirect labor costs incurred in researching issues due to the rearrangement and renumbering the rules.

There would be no direct impact on the consumer, although indirect costs could be passed on to the consumer as a result of any increased costs to vendors. However, these costs should be minimal and temporary.

Consumers would benefit from the clarification of the definition of "casual sale" in R15-5-101 which updated and renumbered from R15-5-2001 in 2019.

The amendment of these rules did not cause any additional reporting or compliance requirements for small businesses.

R15-5-2002, R15-5-2003, R15-5-2004, and R15-5-2009 were amended in 2019. Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorized an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after the August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

R15-5-2007 was amended in 1996. The economic impact statement discussed consequences affecting the Department, other state agencies, counties and municipalities, taxpayers, consumers, and small

businesses.

It was believed that the costs incurred by Department and other state agencies would be minimal. The amendment of the rule would result in time and cost savings for the Department since it would no longer be necessary for personnel to explain to taxpayers the requirements and procedures regarding the accounting credit.

A taxpayer having more than one transaction privilege tax license would bear the burden of determining whether it will allocate the allowable credit amount to one or more of its licenses and report the allocation to the Department. However, the taxpayer would benefit from the rule by having definitive requirements and procedures to follow.

The Department believed that there would be no direct or indirect costs or benefits to consumers.

Small businesses that pay transaction privilege or severance tax may be potentially impacted by the rule; however, the amendment to the rule caused no additional reporting or compliance requirements.

The impact statement discussed the adverse consequences to counties, municipalities, and the state general fund as a result of the costs associated with the rule. However, this is not an accurate observation because the economic impact of the accounting credit is derived from the statutes themselves and not the rules adopted to interpret the statute.

With the exception of the statement regarding the fiscal impact to counties, municipalities, and the state general fund resulting from the accounting credit, and based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments are accurate.

#### 12. Rules in A.A.C. Title 15, Chapter 5, Article 21

The majority of the rules in article 21 were amended effective October 17, 1997. One rule was repealed. An economic impact statement was prepared for the article as a whole as a consequence of the rules affecting the Department, private entities, consumers and small business.

The Department previously determined that taxpayers in the utilities business would be best served

by amending the utilities classification rules to provide clarification, remove conflicts with statute and to conform the language to the Secretary of State's guidelines. In addition, any antiquated and repetitive rules would be repealed.

It was anticipated that Department personnel would experience time and cost savings in answering inquiries from the public since the rules would be clear, concise and understandable. Better guidance to taxpayers was expected to lead to fewer protests and appeals resulting in cost savings for taxpayers.

The Department projected that there would be no impact on consumers. Small businesses were expected to see the same consequences as private entities.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected at the time of the amendments and the repeal are accurate.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In the previous five year review, the Department considered proposed action for nine (9) of the rules. Due to the rule moratorium, those anticipated amendments were not made. The Department did not seek an exception to the rules moratorium because it did not have proper justification to do so under the previous Executive Orders. However, the Department did amend A.A.C. R15-5-101 to incorporate legislative changes concerning economic nexus, remote sellers and marketplace facilitators. The Department amended A.A.C. R15-5-1708 to address gratuities and credit card fees. A.A.C. R15-5-1860 was amended to include changes to conform with the changes to the statute which included the removal of "a mobile facility, motor vehicle or other such conveyance" from the list of retailers permitted to sell tax exempt food. The Department amended A.A.C. R15-5-2002, A.A.C. R15-5-2004, and A.A.C. R15-5-2009 to update the rules to include remote sellers and marketplace facilitators. Finally, A.A.C. R 15-5-

2001 was renumbered from R5-15-101. Not all the rules were specifically amended as recommended in the previous 5 year review however the Department has been able to complete amendments for seven (7) rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The probable benefits of these rules outweigh within this state the probable costs of the rule, and the rules impose the least burden and costs to regulated persons by the rules.

12. **Are the rules more stringent than corresponding federal laws?** Yes No X

There are no corresponding federal laws. The rules are based on state law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

No rules were adopted after July 29, 2010 that required the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department will submit recommended changes to the following rules by September 1, 2022 pursuant to Executive Order 2021-02 or any new executive order:

The requested dates are based on the historically heavier workload the Department faces during the first quarter of the year. This heavier workload is generally due to legislative issues

which require an immediate response, and responding to taxpayers inquiries regarding the new legislative changes.

The Department would change the following rules:

Rule	<i>Explanation</i>
<b>R15-5-902</b>	<i>General:</i> The department would amend section B as: “A person engaged in the business of mining is not subject to tax under the mining classification if the sale of the materials are incorporated into a modification project or if the materials are used in MRRA projects under A.R.S. §42-5061(A)(27).”
<b>R15-5-1101</b>	<i>General:</i> The references to qualifying health care organization and qualifying hospital references are outdated and would change A.R.S. §42-5001(10) to A.R.S. §42-5001(12) and A.R.S. §42-5001(11) to A.R.S. §42-5001(13).
<b>R15-5-1302</b>	<i>General:</i> The Department would remove section C.
<b>R15-5-1303</b>	<i>Definitions:</i> The Department would replace “1” with “18”.
<b>R15-5-1304</b>	Change the rule to conform to the rulewriting standard.
<b>R15-5-1305</b>	Change the rule to conform to the rulewriting standard.
<b>R15-5-1604</b>	<i>Gross Income:</i> The Department would replace “five” to “three.”
<b>R15-5-1605</b>	<i>Rental to Government Agencies:</i> The Department would remove section B.
<b>R15-5-1860</b>	<i>Definitions:</i> The Department would remove the words “hot and cold sandwiches.”
<b>R15-5-1862</b>	<i>Restaurant food sales:</i> The Department would add to this rule sealed and prepacked bags of foods such as bags of coffee beans and pies when purchases that cannot be eaten of the premises would be taxable under the retail classification if sold by a qualified retailer.
<b>R15-5-2010</b>	Change the rule to conform to the rulewriting standard.
<b>R15-5-2011</b>	Change the rule to conform to the rulewriting standard.

<b>R15-5-2022</b>	Change the rule to conform to the rulewriting standard.
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# ARIZONA DEPARTMENT OF REVENUE

1600 WEST MONROE • PHOENIX, ARIZONA 85007

ROSE MOFFORD  
GOVERNOR

PAUL WADDELL  
ACTING DIRECTOR

July 8, 1988

Mr. Ben Froehlich, Chairman  
Governor's Regulatory Review Council  
Department of Administration  
1700 W. Washington, Room 602  
Phoenix, AZ 85007

Dear Mr. Froehlich:

The following information is provided to assist the Council in reviewing the proposed adoption to R15-10-202, Taxpayer bonds for contractors:

## I. Description of Rule

A. A.R.S. § 42-1305.01 was added by Laws 1987, Chapter 203, Section 1. It requires certain transaction privilege tax applicants to post a surety bond prior to receiving a license. The statute establishes when a licensee must post a bond, however a Rule is necessary to define terms, establish classes of bond amounts and exemptions of bonding requirements.

B. The rule will establish five different bond amounts and the types of contractors that shall be required to post each type of bond. Standard Industry Classifications are being used to group licensees. This is the most efficient way to group the licensees because the Department is already using Standard Industry Classifications to group the licensees for other purposes.

## II. Direct Consequences

<u>Description of Consequences</u>	<u>Dollar Value of Increased Cost/Decreased Revenue</u>	<u>Dollar Value of Decreased Cost/Increased Revenue</u>
A. 1) Department of Revenue will have to process the bonds and waiver requests.		Increased revenues due to improved collections is unknown.

II. Direct Consequences (Cont.)

<u>Description of Consequences</u>	<u>Dollar Value of Increased Cost/Decreased Revenue</u>	<u>Dollar Value of Decreased Cost/Increased Revenue</u>
First year estimate of \$6,303.15 (907 man-hours, 10 minutes per bond), subsequent years \$3,794.39 (546 man-hours). However these costs will be absorbed. Supplies and mailing costs will average \$1375/year.		
2) The Department will incur mail costs in notifying taxpayers of required bonding. The cost to certify a letter is \$.25 for a one ounce letter plus \$1.65 to mail it certified return receipt requested for a total of \$1.90 for the average letter. Almost no letters will be mailed until the second year. After the second year we are uncertain how many letters will be mailed.	Unknown	
3) Hearings of licensees whose bond is being forfeited will bear an approximate cost of \$125 for an average one hour hearing. The number of bonds that the Department will attempt to forfeit is unknown.	Unknown	

II. Direct Consequences (Cont.)

<u>Description of Consequences</u>	<u>Dollar Value of Increased Cost/Decreased Revenue</u>	<u>Dollar Value of Decreased Cost/Increased Revenue</u>
B. 1) The Secretary of State's office will incur the costs of publishing this rule within the Administrative Digest and codifying this rule within the A.A.C.	Determined at time of printing.	
2) The Department shall deposit cash, alternatives to cash and bonds with the State Treasurer. The State Treasurer will incur minor administrative costs maintaining custody of bonds. The approximate cost of maintaining each bond for 24 month period is \$17.00.	Unknown	
3) The State Treasurer's office will not have any expense in the creation of forms. The State Treasurer's office already has forms in place which will be used by the Department.		
C. Contractors from out of state and new Arizona contractors will have to purchase a Surety bond or Certificate of Deposit.	Average Cost for bond is \$100 per \$2000 bond value.	
D. No direct effect on consumers.		

Ben Froehlich, Chairman  
July 8, 1988  
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### III. Indirect Consequences

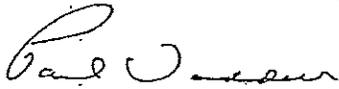
- A. The Department of Revenue will benefit because only businesses seriously pursuing contracting and manufacturing housing businesses will apply for licenses.
- B. Board of Contractors may have to increase compliance investigations because contractors may try to avoid licensing for sales tax due to the increased cost of licensing.
- C. Private agencies that prepare guides for contractors and/or general business guides will need to revise their materials. Processing of the bonds will take time, especially for mailed applications, therefore applicants will have to plan ahead.
- D. Consumers will benefit through increased collection of sales tax from a class of business that traditionally has not paid its fair share. The cost of items sold by contracts may increase if the additional cost of the bond is passed through to the consumers.

### IV. Impact on Small Businesses

Small businesses will be affected as discussed in II.C and III.C. Small businesses' cash flow may be adversely affected because the bond is required to be posted before the license is issued, instead of waiting to pay the state after collecting the tax. However the cost of the bond is relatively small and shall insure that small businesses shall be able to pay their taxes if they experience cash flow problems later. Further, no reasonable alternatives are available to lessen these impacts upon small business. Small businesses may experience an undeterminable benefit because the bonding process may discourage less scrupulous businesses from entering the market.

The attached rule is prepared for filing with the Secretary of State. Should you have any questions, please feel free to contact the Tax Policy Section at (602) 255-4672.

Sincerely,  
ARIZONA DEPARTMENT OF REVENUE



Paul Waddell  
Director

KC:rh

Attachment

R10-202

# ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

## TITLE 15, CHAPTER 5, ARTICLE 9. SALES TAX—MINING CLASSIFICATION

<del>R15-5-903</del> , <u>R15-5-901.</u>	Definitions
R15-5-902.	General
R15-5-903.	Definitions <u>Renumbered</u>
R15-5-904.	<u>Manufacturing or Processing Service Charges</u>
R15-5-905.	Products <u>Shipped Out</u> <del>shipped out of</del> <u>Arizona state</u>
R15-5-906.	<del>Retail sale of processed products</del>
R15-5-908.	<u>Actual Freight Paid</u> <del>Cost of freight</del>

The following information is provided to assist the Council in reviewing the amendment or repeal of administrative rules under A.A.C. Title 15, Chapter 5, Article 9. The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the mining classification. As a result of changes in statute and in preparation for the Department's 5-year review of Article 9, which is due in November of 2000, the Department is proposing to amend the rules to conform to current statutes and rulemaking guidelines.

When these rules were written metal and non-metal mining were both part of the mining classification. However, since that time the mining classification was amended to include only non-metal mining. Metal mining is now taxed under severance tax (A.R.S. § 42-5202). Therefore, all of the rules in this Article are amended to remove anything that applies to metal mining. Severance tax is not part of this rule package.

Arizona Revised Statutes (A.R.S.) § 42-5072 states that the mining classification of transaction privilege tax is comprised of the business of mining, quarrying, or producing for sale, profit, or commercial use any nonmetalliferous mineral product. The number of businesses that filed under the mining classification in fiscal year 98-99 was approximately 154. The total tax collections for the mining classification in fiscal year 98-99 was approximately \$6.4 million. However, the rules only provide guidance in the application of the statute, the statute imposes the tax and establishes any deductions.

I. Description of Rules Adopted for Amendment or Repeal

~~R15-5-903.~~ R15-5-901. **Definitions.** R15-5-903 contains definitions that apply to all of Article 9, therefore, the Department proposes to renumber R15-5-903 to R15-5-901. In addition, the Department proposes to amend the rule to provide references to the statutory definitions, remove references to metal mining, and remove the definition of "mineral products," which is no longer needed.

~~R15-5-902.~~ **General.** This rule is intended to provide general information regarding taxation under the mining classification. The department proposes to amend the rule to use active voice and to conform to the requirements of the Governor's Regulatory Review Council. Also, the Department is proposing to repeal R15-5-906 and incorporate the issue it addressed into a new Subsection (C). This is being proposed so that all the general information regarding the taxation of non-metal is in one rule.

R15-5-904. Manufacturing or Processing Service Charges. This rule is intended to provide guidance regarding the taxation of manufacturing or processing service charges. The Department proposes to amend this rule to remove everything that relates to metal mining. In addition, the balance of this rule is amended to use active voice and to conform to the requirements of the Governor's Regulatory Review Council.

R15-5-905. Products Shipped Out ~~shipped out of Arizona state~~. This rule is intended to provide guidance regarding the determination of the tax base under the mining classification for nonmetalliferous mineral products that are shipped out of state without being sold. The Department proposes to amend R15-5-905 to use the active voice and to conform to the requirements of the Governor's Regulatory Review Council. In addition, Subsection (B)(2)(a) was amended to change "common carrier freight actually paid" to "actual freight paid as provided in R15-5-908."

R15-5-906. ~~Retail sale of processed products~~. The Department proposes to incorporate the information contained in this rule into R15-5-902 and repeal this rule.

R15-5-908. Actual Freight Paid Cost of freight. This rule currently requires that freight costs must actually be paid to a third party carrier to be deductible from the tax base. Deliveries in the seller's own conveyance do not qualify for deduction. The Department proposes to amend the rule to provide that all actual freight costs incurred by a mining business in connection with a sale that are included in the sales price may be deducted if the actual freight costs incurred are separately stated in the billing to the customer. If the mining business does not separately state the actual freight costs incurred in the billing to its customer then only the freight costs paid to a third party are deductible. The Department also proposes to amend the rule to use the active voice and to conform to the requirements of the Governor's Regulatory Review Council.

## II. Cost Benefit Analysis

### A. Legend

Minimal Costs	=	Less than \$1,000
Moderate Costs	=	\$1,000 to \$10,000
Substantial Costs	=	More than \$10,000

### B. Costs and Benefits to the Department of Revenue

1. The Department will incur minimal costs in meeting the APA requirements.
2. Department personnel should experience time and cost savings in answering inquiries from the public since the rules will be clear, concise, and understandable and the rules will no longer contain

references to metal mining in conflict with statute. It is not possible to quantify this benefit.

C. Costs and Benefits to Other State Agencies

1. The Secretary of State should incur minimal costs in noticing and printing the amended rules.
2. The Governor's Regulatory Review Council staff will incur costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of State. However, the Department does not have the data necessary to quantify these costs.
3. Minimal costs will be incurred by state agencies to obtain copies of the amended rules.
4. The changes made in this rulemaking are to provide guidance in the interpretation of statute. The rules do not add any additional burden on taxpayers and should have a very limited revenue impact, if any, on the general fund. Any reduction in revenues is due to statute and not the rules.

D. Costs and Benefits to Taxpayers (Persons engaged in business under the mining classification)

1. Taxpayers could incur a minimal cost in obtaining copies of the rules.

2. Taxpayers should benefit from these rules by having accurate and definitive requirements and procedures to follow. This benefit is unquantifiable.

3. Taxpayers are not expected to incur any expense in the amendment of these rules.

E. **Costs and Benefits to Consumers**

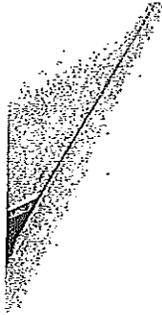
Since the transaction privilege tax is imposed on the vendor, not the purchaser, i.e., the consumer, there should be no direct or indirect impact on consumers.

III. **Alternatives Considered**

The department considered repealing rather than amending the rules. However, it was determined that taxpayers in the mining business would be better served by amending all the mining classification rules to provide clarification, remove conflicts with statute, and to conform the language to the requirements of the Governor's Regulatory Review Council.

IV. **Impact on Small Businesses**

Statutes define a small business as a concern which is independently owned and operated, not dominant in its field, and employs fewer than one hundred full time employees or had gross annual receipts of less than four million dollars in its last fiscal year.

- 
- A. The amendment of these rules causes no additional reporting or compliance requirements for small businesses.
  - B. There is no method available to simplify the compliance or reporting requirements or to exempt small businesses.
  - C. Small businesses should benefit both directly and indirectly from the increased clarity of the mining classification with the amendment of the rules.

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

(A.R.S. § 41-1055(B))

## I. Identification of the proposed rulemaking:

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R15-5-150	Amend
Article 11	Amend
R15-5-1101	New Section
R15-5-1102	New Section
R15-5-1103	Repeal
R15-5-1104	Repeal
R15-5-1105	Repeal
R15-5-1106	Amend
R15-5-1107	Repeal
R15-5-1109	Repeal
R15-5-1111	Amend
R15-5-1112	Amend

With this rulemaking package, the Arizona Department of Revenue ("the Department") is amending existing rules discussing taxation of various forms of printing and photography businesses subject to Arizona transaction privilege tax under the retail and job printing classifications. The rules are contained in Chapter 15, Articles 1 and 11.

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

A. The Department.

- B. Photographers.
- C. Various printers and businesses subject to tax under the job printing classification, including photofinishers and photo developers.

**III. Cost-benefit analysis:**

Legend

- Minimal Costs = Less than \$1,000
- Moderate Costs = \$1,000 to \$10,000
- Substantial Costs = More than \$10,000

**A. Probable costs and benefits to the Department (implementing agency):**

The Department expects to incur minimal costs in meeting the APA rulemaking requirements and changing the instructions in related pamphlets, brochures, and notices that are distributed to the public. The Department expects to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by the rule. Nevertheless, the Department does not have the necessary data to quantify this benefit.

**B. Probable costs and benefits to other state agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

Not applicable.

**C. Probable costs and benefits to political subdivisions directly affected by the implementation and enforcement of the proposed rulemaking:**

Political subdivisions of this state may incur minimal costs in noticing and printing the new rule for the public as they deem necessary. Nevertheless, the Department does not have the necessary data to quantify this cost.

**D. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:**

The Department does not anticipate any effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking. Businesses engaged in photography and job printing activities are currently subject to transaction privilege tax. The rulemaking clarifies the nature of activities that are subject to tax under the retail classification and those that are taxable under the job printing classification, both of which have a tax rate of 5.6 percent. Those businesses that did not have a clear understanding of the job printing classification as it relates to electronic-based business activities may have been unclear about their tax liability, or alternately, remitted tax under the retail classification rather than the job printing classification. Such businesses may incur additional costs to remit and report the correct amount of tax due on various electronic-based forms of printing discussed in the amendments, or alternately, they may initially incur administrative costs, to the extent that such businesses would have to make adjustments to their internal recordkeeping and reporting methods, or additional costs. Nevertheless, the Department does not have the necessary data to quantify this cost.

**IV. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking:**

The Department anticipates no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

**V. Statement of the probable impact of the proposed rulemaking on small businesses:**

Pursuant to A.R.S. § 41-1001(19), a “small business” is “a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.”

**A. Identification of the small businesses subject to the proposed rulemaking:**

Small businesses that would be affected by the rule are those that fall within the categories provided in Paragraphs II(B) and II(C) *supra*.

**B. Administrative and other costs required for compliance with the proposed rulemaking:**

Any potential costs of the rulemaking would be identical to those described in subsection III(D) *supra*.

**C. Description of the methods that the agency may use to reduce the impact on small businesses:**

The Department offers a wide variety of seminars and information sessions for the general public through its Community Outreach and Education (CORE) programs, which are largely attended by operators of small businesses. CORE currently provides information on the topics covered by this rulemaking, and the Department anticipates that it will be the most effective method for disseminating information on the concepts and changes made by the rulemaking, thereby reducing any impact upon the small business sector.

**D. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:**

Transaction privilege tax is imposed on the privilege of doing business in Arizona and is a liability upon sellers and vendors, not the final consumers. Nevertheless, the amount of the tax is typically passed on to consumers and they therefore are affected, albeit indirectly, by the final rule. There would be no change to the amount of Arizona transaction privilege tax passed to persons for whom the taxable activities are performed. As stated *supra*, the state tax rates for activities subject to tax under the retail classification and the job printing classification are the same, and consumers would thus not perceive a change in the amount of tax passed on to them by vendors.

**VI. Statement of the probable effect on state revenues:**

The current state tax rate for both the retail and job printing classifications is 5.6 percent. The Department predicts that there will be either no impact or a minimal positive impact on state revenue derived from transaction privilege tax proceeds currently collected. The minimal positive impact would be the result of businesses providing electronic-based job printing services that currently are unaware of their tax liability under the job printing classification. Nevertheless, the Department does not have the necessary data to quantify this potential positive impact.

**VII. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

Not applicable.

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

(A.R.S. § 41-1055(B))

## I. Identification of the proposed rulemaking:

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R15-5-1102	Amend

The transaction privilege tax is imposed under the A.R.S. § 42-5066 job printing classification on the business of job printing, engraving, embossing, and copying. 1,269 taxpayers filed tax returns under the job printing classification in Fiscal Year 2006. The entire gross proceeds of sales or gross income derived from the business is generally subject to tax, unless a specific statutory exemption or deduction applies. In the December 30, 2005 issue of the *Arizona Administrative Register*, the Arizona Department of Revenue ("Department") explained in its Notice of Final Rulemaking for rules addressing the job printing classification for transaction privilege tax that "A.R.S. § 42-5066, which addresses the job printing classification does not provide an exemption for gross income derived from . . . charges for shipping and handling; consequently, an administrative rule cannot provide for such an exemption." 11 A.A.R. 5493, 5500.

Subsequent to the promulgation of this administrative rule, the Arizona State Legislature amended A.R.S. § 42-5066, effective September 21, 2006, to provide a specific deduction in the job printing classification for postage and freight charges. See 2006 Ariz. Sess. Laws 105 § 1 (approved by Governor Janet Napolitano on April 12, 2006). Consequently, the Department is amending its administrative rule on a printer's sale of printing to account for the new exemption. With this rulemaking package, the Department is amending A.A.C. R15-5-1102 to allow for the postage and freight charge deduction.

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

- A. The Department.
- B. Persons subject to tax under the job printing classification.

**III. Cost-benefit analysis:**

Legend

- Minimal Costs = Less than \$1,000
- Moderate Costs = \$1,000 to \$10,000
- Substantial Costs = More than \$10,000

**A. Probable costs and benefits to the Department (implementing agency):**

The Department expects to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers questioning the apparent contradiction between the current language of A.A.C. R15-5-1102 and the postage and freight charge deduction provided in statute. Nevertheless, the Department does not have the necessary data to quantify this benefit.

**B. Probable costs and benefits to other state agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

Not applicable

**C. Probable costs and benefits to political subdivisions directly affected by the implementation and enforcement of the proposed rulemaking:**

The imposition of city privilege taxes is separate and distinct from the imposition of the state's transaction privilege tax and county excise taxes. The League of Arizona Cities and Towns created the Model City Tax Code ("MCTC") to impose

and administer city privilege taxes. All Arizona cities follow the MCTC in the imposition of their privilege and use taxes, based upon their local ordinances. Consequently, the statutory change that this rulemaking responds to for state transaction privilege tax purposes does not impact the local job printing taxes imposed by political subdivisions in Arizona.

**D. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:**

The Department anticipates that businesses will benefit from the new statutory deduction and clear guidance provided by the rule. Nevertheless, the Department does not have the necessary data to quantify this benefit.

**IV. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking:**

The Department anticipates no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

**V. Statement of the probable impact of the proposed rulemaking on small businesses:**

Pursuant to A.R.S. § 41-1001(19), a “small business” is “a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.”

**A. Identification of the small businesses subject to the proposed rulemaking:**

Small businesses that would be affected by the rule are those that fall within the category provided in Paragraph II(B) *supra*.

**B. Administrative and other costs required for compliance with the proposed rulemaking:**

Besides the ordinary recordkeeping required of businesses to substantiate their entitlement to any statutory exemption, the Department does not expect any changes in compliance with the rulemaking that would necessitate administrative or other costs.

**C. Description of the methods that the agency may use to reduce the impact on small businesses:**

The Department does not expect an impact on small businesses as a result of the rulemaking, but answers taxpayer questions to the Department through the Taxpayer Information and Assistance Section and conducts informational seminars through programs organized by the Community Outreach and Education Section to specifically inform small businesses of tax compliance matters.

**D. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:**

Similar to the benefits the rulemaking will provide to businesses, the clarification of new statutory language made in the rule will benefit private persons who are subject to transaction privilege tax under the job printing classification.

**VI. Statement of the probable effect on state revenues:**

Although the underlying introduction of a new statutory deduction may have a negative effect on transaction privilege tax collected under the job printing classification, the Department predicts that the amendment of the rule will have no effect on state revenues.

**VII. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

None

# ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

## TITLE 15, CHAPTER 5, ARTICLE 14. TRANSPORTING SALES TAX ~~RAILROADS~~ ~~AND AIRCRAFT CLASSIFICATION~~

R15-5-1404. Excess Baggage Charges ~~baggage charges~~

R15-5-1405. Demurrage Charges ~~charges~~

R15-5-1408. Rental of Aircraft ~~airplanes~~

The following information is provided to assist the Council in reviewing the amendment of administrative rules under Title 15, Chapter 5, Article 14. The administrative rules being amended were adopted by the Department in the late 1970s and have not been amended since their adoption. The rules provide guidance in the application of the transaction privilege tax to persons engaged in business under the transporting classification. When these rules were adopted transporting by railroad and aircraft was taxed separately from transporting by motor vehicle. Currently, transporting by aircraft, railroad, and motor vehicle is taxed under the transporting classification of transaction privilege tax. The rules were initiated as a result of the department's 5-year review of Article 14. The Department is amending the article to reference all of the transporting classification rather than just railroads and aircraft. The amendments to the rules extend the rules to all taxable transporting, conform the rules to current statutes, provide clarification and conform the language to the requirements of the Governor's Regulatory Review Council.

Arizona Revised Statutes (A.R.S.) § 42-5062 levies the transaction privilege tax on the business of transporting for hire persons, freight, or property by motor vehicle, railroads, or aircraft from one point to another point in this state. The number of businesses that

filed under the transporting classification in fiscal year 98-99 was approximately 1600. The total tax collections for the transporting classification in fiscal year 98-99 was approximately \$4.7 million. However, the rules only provide guidance in the application of the statute, the statute imposes the tax and establishes any deductions.

I. Description of Rules Adopted for Amendment

**R15-5-1404. Excess Baggage Charges.** Originally this rule was intended to provide clarification that a charge for transporting excess baggage from one point to another point in Arizona by railroad or aircraft was taxable under the transporting classification. The article is being expanded to include all transporting that is taxable under the transporting classification. Therefore, the Department proposes to amend this rule to provide for an exemption that applies to transporting by motor vehicle and to conform the language to the requirements of the Governor's Regulatory Review Council.

**R15-5-1405. Demurrage Charges.** This rule addresses the taxability of demurrage charges under the transporting classification. This rule currently states that demurrage charges on freight shipped from outside the state to a point within the state are taxable. However, demurrage is taxable under the transporting classification because it is part of the transporting activity. Therefore, the Department proposes to amend the rule to state that demurrage is taxable under the transporting classification unless the transporting to which it relates is excluded from the transporting classification. The Department also

proposes to amend the rule to conform the language to the requirements of the Governor's Regulatory Review Council.

**R15-5-1408. Rental of Aircraft.** Originally this rule provided that the rental or lease of aircraft was taxable under the personal property rental classification rather than the under the transporting classification. The Department proposes to expand the rule to distinguish between when the use of an aircraft is rent and when it is transporting. The Department also proposes to amend the rule to conform the language to the requirements of the Governor's Regulatory Review Council.

## II. Cost Benefit Analysis

### A. Legend

Minimal Costs	=	Less than \$1,000
Moderate Costs	=	\$1,000 to \$10,000
Substantial Costs	=	More than \$10,000

### B. Costs and Benefits to the Department of Revenue

1. The Department will incur minimal costs in meeting the APA requirements.
2. Department personnel should experience time and cost savings in answering inquiries from the public since the rules will be clear, concise, and understandable and R15-5-1405 will no longer contradict statute. In addition the rule will provide guidance to a

larger number of taxpayers. It is not possible to quantify this benefit.

C. Costs and Benefits to Other State Agencies

1. The Secretary of State should incur minimal costs in noticing and printing the amended rules.
2. The Governor's Regulatory Review Council staff will incur costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of State. However, the Department does not have the data necessary to quantify these costs.
3. Minimal costs will be incurred by state agencies to obtain copies of the amended rules.
4. The changes made in this rulemaking are to provide guidance in the interpretation of statute. The rule does not add any additional burden on taxpayers and should have a very limited revenue impact, if any, on the general fund. Any reduction in revenues is due to statute and not the rules.

D. Costs and Benefits to Taxpayers (Persons engaged in business under the transporting classification)

1. Taxpayers could incur a minimal cost in obtaining copies of the rules.

2. Taxpayers should benefit from these rules by having accurate and definitive requirements and procedures to follow. This benefit is unquantifiable.
3. Taxpayers are not expected to incur any expense in the amendment of these rules.

E. **Costs and Benefits to Consumers**

Since the transaction privilege tax is imposed on the vendor, not the purchaser, i.e., the consumer, there should be no direct or indirect impact on consumers.

III. **Alternatives Considered**

The department considered repealing rather than amending the rules. However, it was determined that taxpayers in the transporting business would be better served by amending all the transporting classification rules to provide clarification, remove conflicts with statute, and to conform the language to the requirements of the Governor's Regulatory Review Council.

IV. **Impact on Small Businesses**

Statutes define a small business as a concern which is independently owned and operated, not dominant in its field, and employs fewer than one hundred full time employees or had gross annual receipts of less than four million dollars in its last fiscal year.

- A. The amendment of these rules causes no additional reporting or compliance requirements for small businesses.
- B. There is no method available to simplify the compliance or reporting requirements or to exempt small businesses.
- C. Small businesses should benefit both directly and indirectly from the increased clarity of the transporting classification with the amendment of the rules.

# ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

Title 15, Chapter 5,

- R15-5-1502. General
- R15-5-1506. Rental of Tangible Personal Property property to Government  
government Agencies agencies
- R15-5-1507. Rental of Tangible Personal Property property to Schools  
schools, Churches churches, and Other other Nonprofit  
nonprofit Organizations organizations
- R15-5-1512. Lease – Purchase purchase Agreements agreements
- R15-5-1513. ~~Data processing equipment~~

The following information is provided to assist the Council in reviewing the Department's proposed amendment and repeal of administrative rules under Arizona Administrative Code ("A.A.C.") Title 15, Chapter 5. These rules provide additional guidance regarding the application of transaction privilege tax to persons engaged in the business of leasing tangible personal property. As a result of legislative changes and the 5-year review of A.A.C. Title 15, Chapter 5, the Department is proposing to amend or repeal these rules because the rules are obsolete, repetitive, or contradict current statute. The Department also proposes to amend these rules to conform with current rulemaking guidelines.

Arizona Revised Statutes ("A.R.S.") § 42-5071 levies the transaction privilege tax on the business of leasing or renting tangible personal property for a consideration. The number of businesses that filed under the personal property rental classification in fiscal year 1998-99 was 4,721. The total tax collections for the personal property rental classification in fiscal year 1998-99 was approximately \$158.5 million. However, the rules only provide guidance in the application of the statute, the statute imposes the tax and establishes any exclusions, exemptions, or deductions.

I. Description of Rules

A. **Adopted for Repeal**

Due to the Department's 5-year review of this Chapter, the Department proposes to repeal R15-5-1513 because the information provided in this rule is obsolete and contradicts the underlying statute, A.R.S. § 42-5071.

B. **Rules to be Amended**

**R15-5-1502. General.** This rule's objective is to provide general information regarding the imposition of transaction privilege tax on the business of leasing tangible personal property. Since this rule was adopted, the Legislature has amended the underlying statute, A.R.S. § 42-5071. In addition, this rule does not conform with the Governor's Regulatory Review Council's

regulatory guidelines. Therefore, the Department proposes to amend this rule to comply with the statutory provisions and current rulemaking guidelines as well as the Department's 5-year review of this Chapter.

R15-5-1506. Rental of Tangible Personal Property ~~property~~ to Government ~~government~~ Agencies ~~agencies~~. This rule's objective is to inform taxpayers that there is no general exemption for leases of tangible personal property to government agencies. However, this rule contradicts the underlying statute because A.R.S. § 42-5071 provides various exclusions, exemptions, or deductions which may apply to government agencies. Because this rule does not conform with the Governor's Regulatory Review Council's regulatory guidelines, these amendments also revise the rule's language to improve the rule's clarity and conciseness. Therefore, the Department proposes to amend this rule to comply with the statutory provisions and current rulemaking guidelines as well as the Department's 5-year review of this Chapter.

R15-5-1507. Rental of Tangible Personal Property ~~property~~ to Schools ~~schools~~, Churches ~~churches~~, and Other ~~other~~ Nonprofit ~~nonprofit~~ Organizations ~~organizations~~. This rule's objective is to inform taxpayers that there is no general exemption for leases of tangible personal property to nonprofit organizations. However, this rule contradicts the underlying statute because A.R.S. § 42-5071 provides that leases to certain charitable lessees are exempt from transaction privilege tax under the personal property rental

classification, A.R.S. § 42-5071. Because this rule does not conform with the Governor's Regulatory Review Council's regulatory guidelines, these amendments also revise the rule's language to improve the rule's clarity and conciseness. Therefore, the Department proposes to amend this rule to comply with the statutory provisions and current rulemaking guidelines as well as the Department's 5-year review of this Chapter.

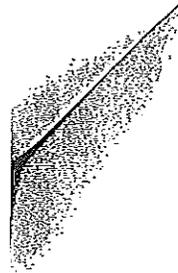
**R15-5-1512. Lease – Purchase purchase Agreements agreements.**

This rule's objective is to inform taxpayers when the income from the leasing of tangible personal property with an option to purchase the tangible personal property is taxable under the personal property rental classification. This rule does not conform with the Governor's Regulatory Review Council's regulatory guidelines. These amendments revise the rule's language to improve the rule's clarity and conciseness. Therefore, the Department proposes to amend this rule to comply with current rulemaking guidelines and the Department's 5-year review of this Chapter.

**II. Cost Benefit Analysis**

**A. Legend**

Minimal Costs	=	Less than \$1,000
Moderate Costs	=	\$1,000 to \$10,000
Substantial Costs	=	More than \$10,000



B. Costs and Benefits to the Department of Revenue

1. The Department will incur minimal costs in meeting the APA requirements.
2. Department personnel should experience time and cost savings in answering inquiries from the public because the rules as they exist are not clearly or concisely written and thus, do not meet current rulemaking guidelines. In addition, some of these rules contain obsolete or repetitive information. Therefore, this rule package will reduce the need for Department personnel to explain to taxpayers the requirements and procedures addressed in the rules. It is not possible to quantify this benefit.

C. Costs and Benefits to Other State Agencies

1. The Secretary of State should incur minimal costs in noticing and printing the rulemaking.
2. The Governor's Regulatory Review Council staff will incur costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of

State. However, the Department does not have the data necessary to quantify these costs.

D. Costs and Benefits to Taxpayers (Businesses engaged in business activity subject to the personal property rental classification, A.R.S. § 42-5071)

1. Taxpayers could incur a minimal cost in obtaining copies of the rules.
2. Taxpayers should benefit from these rules by having accurate and definitive requirements and procedures to follow. This benefit is unquantifiable.
3. Taxpayers are not expected to incur any expense in the amendment of these rules.

E. Costs and Benefits to Consumers

Since the transaction privilege tax is imposed on the vendor, not the purchaser, i.e., the consumer, there should be no direct or indirect impact on consumers.



F. Probable Effect on State Revenues

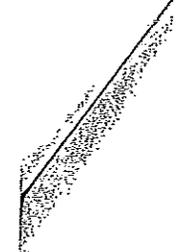
The changes proposed in this rulemaking do not impose any additional fees, taxes or expenditures and thus, should have a very limited revenue impact, if any, on the general fund.

III. Alternatives Considered

The Department considered amending these rules to conform with current statutes and in accordance with the Department's 5-year review of Chapter 5. However, further review of the applicable statutes resulted in the determination that the information provided in R15-5-1513 is not needed and should be repealed. The proposed changes to these rules comply with current rulemaking guidelines.

IV. Impact on Small Businesses

Statutes define a "small business" as "a concern which is independently owned and operated, not dominant in its field and employs fewer than one hundred full time employees or had gross annual receipts of less than four million dollars in its last fiscal year."

- 
- A. The addition, amendment and repeal of these rules cause no additional reporting or compliance requirements for small businesses.
  - B. There is no method available to simplify the compliance or reporting requirements or to exempt small businesses.
  - C. Small businesses should benefit both directly and indirectly from the increased clarity of the rules and statutes that result from this rule package.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

(A.R.S. § 41-1055(B))

**I. Identification of the proposed rulemaking:**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R15-5-1503	Amend

With this rulemaking package, the Arizona Department of Revenue (“the Department”) is amending the existing rule for determining the location of leasing and rental activities for imposing Arizona transaction privilege tax under the personal property rental classification. The rule is contained in Chapter 15, Article 5.

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

- A. The Department, the Governor’s Regulatory Review Council (“GRRC”), Office of the Secretary of State (“the Secretary of State”), and the Arizona Department of Transportation (“ADOT”).
- B. All lessors reporting Arizona transaction privilege tax receipts derived from personal property leases and rentals will be directly affected because the rule provides new guidelines by which the location of leasing activity is determined.
- C. Lessees removing personal property leased or rented in Arizona out of state for use outside the state will be indirectly affected.

**III. Cost-benefit analysis:**

Legend

- Minimal Costs = Less than \$1,000
- Moderate Costs = \$1,000 to \$10,000
- Substantial Costs = More than \$10,000

**A. Probable costs and benefits to the Department (implementing agency):**

The Department expects to incur minimal costs in meeting the APA rulemaking requirements and changing the instructions in related pamphlets, brochures, and notices that are distributed to the public. The Department expects to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by the rule. Nevertheless, the Department does not have the necessary data to quantify this benefit.

**B. Probable costs and benefits to other state agencies directly affected by the implementation and enforcement of the proposed rulemaking:**

The Secretary of State should incur minimal costs in noticing and printing the new rule.

GRRC staff should incur costs in reviewing and analyzing the rulemaking package for submission to the Governor's Regulatory Review Council and to the Secretary of State. Nevertheless, the Department does not have the necessary data to quantify these costs.

ADOT should incur minimal costs in noticing and printing the new rule for affected customers.

**C. Probable costs and benefits to political subdivisions directly affected by the implementation and enforcement of the proposed rulemaking:**

Political subdivisions of this state may incur minimal costs in noticing and printing the new rule for the public if the sourcing provisions for personal property leases and rentals of a particular subdivision differ from those in the rule.

**D. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:**

The Department does not anticipate any effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

Taxpayer-lessors will incur costs associated with: (a) noticing and retraining personnel on the new sourcing provisions of the rule and (b) maintaining adequate records on the location of leased property to ensure that gross receipts from property that has been taken out of Arizona for exclusive use outside the state are not taxed if such records are not already maintained as part of their business. If lessors use software that automatically calculates tax liability for leases and rentals, there may be costs associated with adjusting the formulas used by the application.

The rule will nevertheless benefit taxpayers by providing a "bright-line" standard for determining the location of leasing activity based on information that is already currently being collected and reported to the Department or other state agencies by lessors. Taxpayer-lessors further benefit from clarification that gross

receipts derived from leases and rentals of property that has been taken out of Arizona and is used exclusively outside of the state are not subject to transaction privilege tax.

The Department does not have data to quantify costs and benefits to taxpayers at this time. Nevertheless, it is anticipated that they will vary greatly depending on, among other factors: the size of a lessor's business operation, the sophistication of its operation, complexity of its leasing or rental transactions, and quality of its records as currently maintained.

**IV. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking:**

The Department anticipates no impact on private and public employment in business, agencies, and political subdivisions directly affected by this rulemaking.

**V. Statement of the probable impact of the proposed rulemaking on small businesses:**

Pursuant to A.R.S. § 41-1001(19), a "small business" is "a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year."

**A. Identification of the small businesses subject to the proposed rulemaking:**

Small businesses that would be affected by the rule are those that are taxpayer-lessors of leases or rentals of personal property that is located in Arizona.

**B. Administrative and other costs required for compliance with the proposed rulemaking:**

Potential administrative costs that small businesses must meet are identical to those noted in subsection III(D) *supra*. Nevertheless, the Department believes that small businesses will actually bear lower compliance costs under the final rule because of the simplification of the sourcing of leases and rentals. Most small businesses are likely to be single business location enterprises that would benefit from the ease in sourcing leases and rentals to its business address. Furthermore, small businesses will benefit from the clarification in the rule that no transaction privilege tax is due on gross receipts from those leases or rentals of personal property taken out of Arizona for exclusive use outside the state.

**C. Description of the methods that the agency may use to reduce the impact on small businesses:**

As noted in subsection V(B) *supra*, the final rule will reduce the impact on small businesses engaging in leasing or renting activities by both simplifying the sourcing methodology for their transactions and clarifying that tax is not due on gross receipts from property taken out of Arizona for exclusive use outside the state. Small businesses will also greatly benefit from the new sourcing

methodology, which is based on information that is already currently being collected and reported to the Department or other state agencies by these lessors.

**D. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:**

Transaction privilege tax is imposed on the privilege of doing business in Arizona and is a liability upon lessors, not lessees. Nevertheless, the amount of the tax is typically passed on to lessees and they therefore are affected (albeit indirectly) by the final rule. There would be no change to the amount of Arizona transaction privilege tax passed to lessees of property leased and used in the state, but lessees of property taken out of state that were intended for such out-of-state use at the inception of the lease will find that no liability for tax to Arizona attaches to those leases. This result is a benefit to those consumers in determining any sales or use tax liability personally owing on their leases or rentals.

**VI. Statement of the probable effect on state revenues:**

The current state tax rate for the personal property rental classification is 5.6%.

The Department predicts that there will be a moderate negative impact on state revenue derived from transaction privilege tax proceeds currently collected from leases and rentals that are taken out of Arizona for exclusive use outside of the state. Nevertheless, because a taxpayer reports on gross income derived from all leasing activity rather than providing a line-item breakdown, the Department does not have sufficient data to quantify the amount of revenue currently collected from this particular subset of leasing activity.

**VII. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

The Department considered the option of following the draft lease sourcing guidelines promulgated by the Streamlined Sales Tax Project (“SSTP”). Nevertheless, the Department decided against following the SSTP’s formulation because of ambiguities found the SSTP provisions as compared to the simplicity and equity to taxpayers now found in the provisions of the final rule.

## ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

RE: Title 15, Chapter 5, Article 17 - RESTAURANT CLASSIFICATION

The following information is provided to assist the Council in reviewing the adopted amendments of administrative rules under Title 15, Chapter 5, Article 17. The rules provide guidance in the application of the transaction privilege tax to persons engaged in business under the restaurant classification. The rules were initiated as a result of the department's 5-year review of Article 17. The amendments to the rules delete obsolete language and conform the rules to current rule making guidelines.

Also, R15-5-1704 is adopted as amended to clarify that all sales by restaurants to government agencies are subject to tax, unless a specific exemption applies. The current rule only addresses sales to the military. In addition, R15-5-1709 is adopted as amended to clarify when a restaurant is taxable on the value of coupons that it accepts.

Arizona Revised Statutes (A.R.S.) § 42-1310.14 levies the transaction privilege tax on the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises. The number of businesses that filed under the restaurant classification in fiscal year 96-97 was approximately 8968. The total tax collections for the restaurant classification in fiscal year 96-97 was \$238,986,095.00. However, the rules only provide guidance in the application of the statute, the statute imposes the tax and establishes any deductions.

I. Description of Rules Adopted for Amendment

Existing R15-5-1704, which provides information on the taxation, under the restaurant classification, of gross income from meals served to military personnel or inductees and paid for by the United States Government is amended. The rule's scope is unnecessarily narrow. In addition, the rule's language does not conform to the regulatory requirements of the Governor's Regulatory Review Council. The amendment expands the rule to address a restaurant's income from sales to any government entity and incorporates the regulatory requirements of the Governor's Regulatory Review Council.

Existing R15-5-1705 is amended to delete obsolete language and to conform the language to the requirements of the Governor's Regulatory Review Council.

Existing R15-5-1706 is amended to conform the language to the requirements of the Governor's Regulatory Review Council.

Existing R15-5-1708 is amended to conform the language to the requirements of the Governor's Regulatory Review Council.

Existing R15-5-1709 is amended to clarify when a restaurant is taxable on the value of coupons that it accepts and to conform the language to the requirements of the Governor's Regulatory Review Council.

II. Cost Benefit Analysis

A. Legend

Minimal Costs = Less than \$1,000

Moderate Costs = \$1,000 to \$10,000

Substantial Costs = More than \$10,000

B. Costs and Benefits to the Department of Revenue

1. The Department will incur minimal costs in meeting the APA requirements.
2. The amendment of these rules will also result in time and cost savings to the Department since it will not be necessary for personnel to explain to taxpayers the requirements and procedures addressed in the rules. It is not possible to quantify this benefit prior to the implementation of the adopted rules.

C. Costs and Benefits to Other State Agencies

1. The Secretary of State should incur minimal costs in noticing and printing the amended rules.
2. The Governor's Regulatory Review Council staff will incur costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of State. However, the department does not have the data necessary to quantify these costs.
3. Minimal costs will be incurred by state agencies to obtain copies of the amended rules.

- 4. The changes made in this rulemaking are nonsubstantive and should have a very limited revenue impact, if any, on the general fund.

D. Costs and Benefits to Taxpayers (Persons engaged in business under the Restaurant Classification)

1. Taxpayers could incur a minimal cost in obtaining copies of the rules.
2. Taxpayers should benefit from these rules by having definitive requirements and procedures to follow. This benefit is unquantifiable.
3. Taxpayers are not expected to incur any expense in the amendment of these rules.

E. Costs and Benefits to Consumers

Since the transaction privilege is imposed on the vendor, not the purchaser, i.e., the consumer, there should be no direct or indirect impact on consumers.

### III. Alternatives Considered

The department considered repealing rather than amending the rules. However, it was determined that the taxpayers in the restaurant business would be better served by amending all the restaurant classification rules to provide clarification,

delete obsolete language, and to conform the language to the requirements of the Governor's Regulatory Review Council.

#### IV. Impact on Small Businesses

Statutes define a small business as a concern which is independently owned and operated, not dominant in its field and employs fewer than one hundred full time employees or had gross annual receipts of less than four million dollars in its last fiscal year.

- A. The amendment of these rules causes no additional reporting or compliance requirements for small businesses.
- B. There is no method available to simplify the compliance or reporting requirements or to exempt small businesses.
- C. Small businesses should benefit both directly and indirectly from the increased clarity of the restaurant classification with the amendment of the rules.

Economic Impact Statement  
Title 15, Chapter 5, Article 20  
General

I. Description of Rules and Proposed Rule Actions

A. Description of Rules

R15-5-2001 (former -202) "Definitions" addresses concepts and terms included in statute and in the rules. This clarification increases the understanding of concepts and terminology used in the transaction privilege and use tax rules.

R15-5-2002 (former -204) "Liability for Transaction Privilege Tax" states that the vendor is responsible for payment of the tax whether or not the economic burden of the tax is passed on to the consumer.

R15-5-2003 "Successor liability" is a new rule which discusses the liability for the tax when a business is sold.

R15-5-2004 "Multi-business taxpayers" is derived from R15-5-2215, but in essence is a new rule. The rule states that a taxpayer operating more than one licensed business or a business which engages in more than one category of taxable transactions must keep separate records on each business and each tax classification.

R15-5-2010 (former -1850) "Transactions between affiliated persons" is a largely definitional rule which clarifies relationships affecting the transactions between such persons or entities.

R15-5-2011 (former -1813) "Bad debts" defines a bad debt, delineates when the debt is worthless, how to compute the bad debt deduction and when it is appropriate to do so.

B. Proposed Rule Actions

The Department proposes to activate Article 20 of Title 15, Chapter 5, of the Arizona Administrative Code. Article 20 will include rules covering general transaction privilege and use tax principles.

Current R15-5-202 "Definitions" is proposed for amendment and renumbering as R15-5-2001. Amendments include the deletion of statutory repetition and examples, plus a rephrasing and reorganizing of the current rule. The proposed rule actions follow the regulatory guidelines of the Governor's Regulatory Review Council.

Current R15-5-203 "Nature of the sales tax" is proposed for repeal as being statutorily repetitious.

Current R15-5-204 "Liability for sales tax" is proposed for amendment and renumbering as R15-5-2002. Gender specific language has been deleted as well as verbose phraseology. Clarifying language has been added to make the rule more understandable and clear in its meaning.

Proposed R15-5-2003 "Successor liability" is a new rule delineating the responsibility of the purchaser of a business or stock of goods to withhold monies to pay any tax liability which may be outstanding at the time of a purchase of a business. The rule gives the public the required information in a complete, concise and understandable manner.

Proposed R15-5-2004 "Multi-business taxpayers" delineates the requirement for separate accounting by persons operating in a Multi-business environment. The rule, as proposed, states that the burden is on the taxpayer to maintain appropriate records, and clarifies the tax ramifications if the taxpayer fails to maintain such records.

Proposed R15-5-2010 "Transactions between affiliated persons" is an amendment of current R15-5-1850 which is proposed for transfer from Article 18 - Retail Classification. The rule has been reordered and reorganized to be more understandable in its presentation. The proposed amendments add qualifying terminology and delete verbose phraseology. Clarifying concepts have been added regarding indirect ownership, making the rule more beneficial to the public.

Proposed R15-5-2011 "Bad debts" is derived from current R15-5-1813. The current rule is very limited in its presentation, adding nothing to statutory provisions. The proposed rule establishes criteria and methodology for applying the bad debt concept and in essence is a new rule.

## II. Consequences

### A. Consequences to the Department of Revenue

The proposed rule actions will result in the Department incurring costs in holding the required public hearings and in meeting the other APA requirements. Multiple public hearings are proposed due to the general application of these rules. Hearings will be held in conjunction with those proposed for Retail and for Use Tax, due to the related nature of these rules, thereby saving the public's time and resulting in lower costs to the state and the taxpaying public.

The proposed actions result in less complicated and more complete, concise, and understandable rules. Department time spent responding to correspondence and phone inquiries should be reduced based on increased public awareness and understanding due to the clarification in these rules.

The Department may experience a temporary increase in correspondence, and phone inquiries, because of the deletion of statutory concepts previously in the rules. There may be some frustration by both Department personnel and taxpayers in adjusting to using the statutes in conjunction with the rules. As the reader becomes familiar with the interaction between the rules and the statute these frustrations should be abated.

Proposed R15-5-2004 addressing issues or record-keeping for a person engaged in a Multi-business, clarifies the requirement on the part of the taxpayer and delineates Department action if the taxpayer fails to maintain adequate books and records. The combination of an anticipated increase in voluntary compliance and in increased audit efficiency should reduce Department man-hours resulting in lower costs.

The proposed deletion of the term "Sales Tax" in these rules and in others in the chapter should help in reducing inquiries and complaints received by the Department. There is a general confusion among a substantial portion of the public regarding the use of the term "sales tax" when in fact Arizona is a Transaction Privilege Tax state. This clarification should help alleviate that confusion.

Clarification in the rule regarding successor liability should result in a decrease in the number of requests for explanation regarding the assumption of the tax liability. The statement regarding the obtaining of a letter of good standing from the Department may increase the demand for such letters. Any increase in demand for such letters should be offset by the ability of the Department to identify delinquent taxpayers on a timely basis and at a time when taxpayers should have funds for payment of the tax.

The transfer from the retail classification to the general classification of the rule covering affiliated transactions will clarify that all taxable transactions between parties not conducting business at arm's length are subject to reappraisal by the Department. This coupled with the clarification of definitions of "affiliated persons" in this rule should result in time and cost savings by the Department.

The clarifications in the bad debt and the affiliated persons' rules, and in the definition of a casual sale, should result in reduced time spent on contested issues for the audit section and the Hearing Office.

#### B. Consequences Affecting Other State Agencies

The Secretary of State's Office will incur costs for noticing and printing the proposed rule actions.

The Executive Budget Office will incur costs to analyze and review the proposed rule actions.

Minimal costs will be incurred by state agencies in obtaining copies of the new rules.

The Office of the Attorney General will incur costs to review and process the proposed rule actions as part of the certification procedure. The Attorney General's Office may; however, experience time and cost savings because of the lessening of taxpayer confusion resulting in fewer taxpayer protests and appeals.

### C. Consequences Affecting Private Entities

Due to the general nature of these rules, any entity engaged in business in the state could be affected by the proposed changes and additions.

Costs will be incurred to obtain copies of the new rules both by business entities and legal and accounting offices serving those entities.

The application of these rules may not have an immediate impact on private entities; however, with time, the taxpaying public should come to realize how user friendly these rules are, when taken as a whole. As a result, these general concepts should increasingly serve as a beginning reference to any review of the rules in the entire chapter.

There should be no direct or substantial indirect costs incurred by private entities as a result of the proposed changes, additions and deletions in these rules.

When the rules are first issued indirect costs may be incurred in the form of increased man-hours, or additional accounting and legal fees, to research issues. Due to the moving and renumbering, extra time may be expended in referring to these rules. The provision of cross reference tables should offset such impact and any costs should be of a temporary nature.

### D. Consequences Affecting the Consumer

The clarification in proposed R15-5-2001 regarding the definition of a casual sale may have a positive impact on both individual and business consumers. The concept of a casual sale is difficult to convey in its various nuances and subtleties. The Department does not now, nor has it in the past, intended to tax the person or business selling an item under this circumstance. The clarification in the definitions rule should aid the taxpayer and Department personnel in understanding the ramifications of this type of transaction. Placing this definition only in Article 20 - General allows for easier reference. The rule should be more understandable in its universal application, negating the perception that a different set of circumstances exists for determining a casual transaction within each tax classification.

There should be no other direct impact on the consumer based on the proposed rules. Indirect costs could be passed on to the consumer as a result of any increased costs to retailers. These costs should be minimal and temporary.

### III. Alternatives Considered

The Department evaluated the combination of Articles 20 and 22 into one article, but determined that placing definitional rules in a separate article provides easier access to the public. Not combining Articles 20 and 22 would have necessitated the duplication of rules in Article 24 - Use Tax Administration, Article 26 - Rental Occupancy Tax Administration and possibly Article 27 - Severance Tax.

In reviewing the Use Tax rules, there were a number of concepts in that article which could have been added to the general provisions. It was determined after careful consideration that those concepts were more specific to the Use Tax classification, and as such should not be included in this article.

The Department engaged in extensive analysis of the affiliated parties and the bad debt rules. The concepts are relatively straight forward until the reader attempts to apply them to everyday situations. Specific "how to" provisions were considered for the bad debt rule. However, it was determined that the concept is often industry and entity specific. As such, the rule could have been very limiting for the taxpayer if guidelines were too restrictive. The basic approach taken in the proposed rule should aid the taxpayer and the Department in analyzing whether a deduction for a bad debt is or is not reasonable and allowable.

The current affiliated parties rule was explanatory, but did not convey any information of real substance. As such, the Department considered repealing the rule as statutorily repetitive. However, after further consideration it was determined that the basic meaning of the rule did serve a purpose, but did not go far enough in aiding the taxpayer and the public in determining what is an affiliated party. The rule was therefore expanded to include references to indirect relationships and as such should provide a more complete source of reference for all persons concerned.

### IV. Impact on Small Business

All small businesses should be impacted by these rules. The impact should be beneficial in the sense that the general concepts taken in total with the transaction privilege and use tax chapter makes for a complete and unified reference to the methodology and application of the rules.

These rules, used in conjunction with the administrative rules in Article 22, should be very helpful to anyone considering going into business. The references to successor liability, the liability of the vendor for payment of the tax and the general definitions, are a good starting reference for the new business person.

There is no method under the current statutes to simplify compliance or reporting requirements or to exempt small businesses from these requirements. The revision and renumbering of these rules does not add any additional nor does it change any existing reporting or compliance requirements.

Generally the consequences pertaining to private entities also apply to small businesses.

## ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

RE: Amendment of R15-5-2007  
Title 15, Chapter 5, Article 20 - General

The following information is provided to assist the Council in reviewing the Department's amendment of the administrative rule on the credit for accounting and reporting expenses under Title 15, Chapter 5, Article 20. The amendment to the rule implements provisions under the new statute establishing the credit.

Laws 1994, Ch. 346, § 1, amended Title 42 of the Arizona Revised Statutes to add § 42-1322.04 which provides for the credit for accounting and reporting expenses incurred by transaction privilege and severance taxpayers. The effective date of this provision was for tax reporting periods beginning from and after July 1, 1995. Laws 1995, Chapt. 6, § 1 amended the 1994 statute to include entities which are exempt from reporting state income tax but which have transaction privilege tax licenses. Prior to this amendment, entities exempt from income tax, such as municipal governments, did not qualify for the credit.

The statute provides an accounting credit for transaction privilege and severance tax filers beginning with the July 1995 reporting period. The credit is one percent of the State transaction privilege and severance taxes due as required to be reported on the transaction privilege, use and severance tax return, i.e. TPT-1. The credit does not apply to county and local taxes.

The statutory provision sets the requirements for qualifying for the credit. These requirements are that the credit must be claimed by the taxpayer; the tax liability to which it applies must be paid in full and on time; the return on which the credit is claimed must be filed timely; and the total amount of credit claimed by a taxpayer in a calendar year may not exceed \$10,000. The statute defines "taxpayer" for purposes of the credit as "the business entity under which the business reports for state income tax purposes or an entity that is exempt from state income tax."

The Department initially mailed 348 Form 51T's to those taxpayers who file consolidated and/or combined corporate income tax returns who have transaction privilege tax licenses. The department currently has 384 Form 51T's on file.

Since the statutory provision went into effect on July 1, 1995, the total amount of credit claimed by transaction privilege and severance tax filers is \$6,766,748.

I. Description of Rule Proposed for Amendment

R15-5-2007 "Credit for accounting and reporting expenses" provides guidance in calculating and claiming the accounting credit.

II. Consequences

A. Consequences to the Department of Revenue

1. The Department will incur the costs of meeting the numerous APA requirements.
2. The department will also incur the cost of inputting the information provided on Form 51T for tracking the \$10,000 maximum credit for a calendar year.
3. The amendment of this rule will result in time and cost savings to the Department since it will not be necessary for personnel to explain to taxpayers the requirements and procedures delineated in the rule.

B. Consequences to Other State Agencies

1. The Secretary of State will incur the costs of noticing and printing the proposed rule.
2. The Governor's Regulatory Review Council staff incurs costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of State.
3. Minimal costs will be incurred by state agencies in obtaining copies of the new rules.
4. The costs associated with the rule will generally be borne by the state transaction privilege tax clearing account and the general fund. The cost to the state general fund to date is \$5,135,930.

C. Consequences to Counties and Municipalities

The costs associated with the rule will generally be borne by the state transaction privilege and severance tax clearing account and the general fund. However, the revenues from the transaction privilege and severance taxes are distributed to the counties and cities based on a

statutory distribution formula. Therefore, the amount of accounting credit taken by transaction privilege taxpayers directly impacts the amount of monies to be distributed to the counties and cities. From August 1995 through February 1996, the total fiscal year cost to state/counties/cities of the accounting credit is approximately 6.8 million dollars. The cost to the counties alone, to date is approximately \$1.01 million. The cost to the cities is approximately \$622 thousand.

D. Consequences to Private Entities

1. Private entities could incur a direct cost in obtaining copies of the new rules.
2. Private entities should benefit from these rules by having definitive requirements and procedures to follow.
3. Due to the statutory definition of "taxpayer" and the dollar limitation placed on the allowable credit, a taxpayer having more than one transaction privilege tax license, and taxable business activities exceeding 20 million dollars, will bear the burden of determining whether it will allocate the allowable credit amount to one or more of its licenses and reporting any allocation to the department. Benefits will accrue to the transaction privilege taxpayers claiming the credit. The benefits of the rule are greater than the costs associated with the requirements of the rule.

E. Consequences to Consumers

There should be no direct or indirect costs or benefits to consumers.

III. Alternatives Considered

The department considered repealing rather than amending this rule. However, a review of the statute revealed that this alternative would deprive affected taxpayers of information which is necessary for them to be fully informed of availability and application of the accounting credit:

Therefore, the department determined that amending the existing rule is the most effective and expedient method to ensure that affected taxpayers are fully informed of the statutory requirements.

#### IV. Impact on Small Businesses

Statutes define a small business as a concern which is independently owned and operated, not dominant in its field and employs fewer than one hundred full time employees or had gross annual receipts of less than four million dollars in its last fiscal year.

- A. Small businesses that pay transaction privilege or severance tax are potentially impacted by the rule. However, the proposed amendments to the rule cause no additional reporting or compliance requirements for small businesses.
- B. The formula for calculating the credit is clearly identified on the transaction privilege tax return (Form TPT-1). Therefore, a small business should be able to calculate and claim the credit without needing to hire additional personnel with specialized skills.
- C. It is unlikely that small businesses will be affected by the requirement of filing the form 51T. This requirement applies to those businesses having multiple licenses and taxable sales exceeding 20 million dollars. Small business, by the above definition, would generally be excluded from the requirement to file a Form 51T.

## ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

RE: Title 15, Chapter 5, Article 21 - UTILITIES CLASSIFICATION

The following information is provided to assist the Council in reviewing the amendment and repeal of administrative rules under Title 15, Chapter 5, Article 21. The rules provide guidance in the application of the transaction privilege tax to persons engaged in business under the utilities classification. As a result of the department's 5-year review of Article 21, the department is amending antiquated and repetitive rules. In addition, the department has repealed an unnecessary rule. The changes to the rules are generally nonsubstantive in nature.

Arizona Revised Statutes (A.R.S.) § 42-1310.03 levies the transaction privilege tax on the business of producing and furnishing or furnishing to consumers electricity, natural or artificial gas or water. There are approximately 500 businesses licensed under the utilities classification. The total tax collections for fiscal year 95-96 was \$230,101,991. The rules do not impose any compliance or reporting requirements on taxpayers. The rules merely provide guidance in the application of the statute. However, it is the statute that imposes the tax and establishes any deductions from the tax base.

### I. Description of Rules

#### A. Rule Repealed

Existing R15-5-2108 states that sales of electricity by a United States government agency are not taxable. The principal that a state cannot impose a tax on the federal government is well established in law and this rule added no

additional information on the subject. Therefore, the department has repealed this rule.

#### **B. Rules Adopted for Amendment**

Existing R15-5-2104 provides information relating to the imposition of Arizona's transaction privilege tax on sales of utilities that are delivered out-of-state. The rule is amended to delete antiquated language and to conform the rule to the requirements of the Governor's Regulatory Review Council.

Existing R15-5-2105 provides information on the application of transaction privilege tax to the sales of utilities delivered to a point in this state for use in this state. The rule's language does not conform to the regulatory requirements of the Governor's Regulatory Review Council. The amendment incorporates the regulatory requirements of the Governor's Regulatory Review Council.

Existing R15-5-2106 provides information regarding the sale of compressed and bottled liquids. The rule informs taxpayers that these sales are retail sales and taxable under the retail classification. The rule is amended to conform the language to the requirements of the Governor's Regulatory Review Council.

Existing R15-5-2107 informs taxpayers that the sale of electricity or gas to an irrigation district is subject to tax under the utilities classification unless otherwise exempt. The rule is amended to conform the language to the requirements of the Governor's Regulatory Review Council.

Existing R15-5-2110 provides that security deposits for utility service are not taxable until the amount of the deposit is applied to a customer's bill. The rule is

amended to conform the language to the requirements of the Governor's Regulatory Review Council and to add examples to clarify the taxation of deposits for utility services.

## II. Cost Benefit Analysis

### A. Legend

Minimal Costs	=	Less than \$1,000
Moderate Costs	=	\$1,000 to \$10,000
Substantial Costs	=	More than \$10,000

### B. Costs and Benefits to the Department of Revenue

1. The Department will incur minimal costs in meeting the APA requirements.
2. The repeal and amendment of these rules will result in time and cost savings to the Department since it will not be necessary for personnel to explain to taxpayers the requirements and procedures addressed in the rules. It is not possible to quantify this benefit prior to the implementation of the adopted rules.

### C. Costs and Benefits to Other State Agencies

1. The Secretary of State should incur minimal costs in noticing and printing the repealed and amended rules.
2. The Governor's Regulatory Review Council staff will incur costs in reviewing and analyzing the rule package for submission to the

Governor's Regulatory Review Council and to the Secretary of State. However, the department does not have the data necessary to quantify these costs.

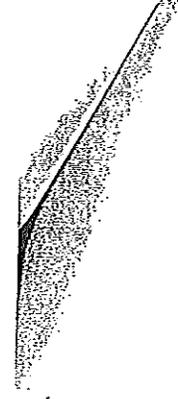
3. Minimal costs will be incurred by state agencies to obtain copies of the repealed and amended rules.
4. The changes made in this rulemaking are nonsubstantive and should have a very limited revenue impact, if any, on the general fund.

D. Costs and Benefits to Taxpayers (Persons engaged in business under the Utilities Classification)

1. Taxpayers will incur a minimal cost to obtain copies of the amended rules.
2. Taxpayers should benefit from these rules by having definitive requirements and procedures to follow. This benefit is unquantifiable.
3. Taxpayers are not expected to incur any expense in the repeal and amendment of these rules.

E. Costs and Benefits to Consumers

Since the transaction privilege is imposed on the vendor, not the purchaser, i.e. the consumer, there should be no direct or indirect impact on consumers.



### III. Alternatives Considered

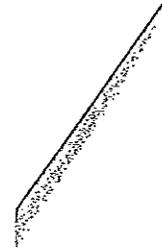
The department considered putting a hold on this rulemaking until the legislature addressed the issue of the impact of the current tax structure on utility companies as a result of the deregulation of the utilities industry. The department is aware of the issue of the fundamental problems with current state transaction privilege and use tax treatment of utilities which place local utilities at a competitive disadvantage. However, the Department of Revenue is an administrative agency and must administer the laws as enacted by the Arizona Legislature. The United States Supreme Court has held that administrative agencies such as the department have no authority except what is expressly granted by statute. *Lyng v. Payne*, 476 U.S. 926, 106 S. Ct. 2333, 90 L. Ed. 921 (1987).

Correspondingly, the department must enforce statutes as the State Legislature has written them. While rules are in force the Administrative Procedures Act requires that they be clear, concise and understandable. If for any reason the rules become obsolete, the department will amend or repeal them at that time. Therefore, the department decided to proceed with this rule action.

### IV. Impact on Small Businesses

Statutes define a small business as a concern which is independently owned and operated, not dominant in its field and employs fewer than one hundred full time employees or had gross annual receipts of less than four million dollars in its last fiscal year.

- A. The repeal and amendment of these rules causes no additional reporting or compliance requirements for small businesses.

- 
- B. There is no method available to simplify the compliance or reporting requirements or to exempt small businesses.
- C. Small businesses should benefit both directly and indirectly from the increased clarity of the transaction privilege tax classifications with the deletion of rules that are inconsistent or repetitive of statute. This benefit is unquantifiable.

## **General and Specific Authorizing Statutes:**

### **42-1005. Powers and duties of director**

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

## **42-5001. Definitions**

In this article and article 2 of this chapter, unless the context otherwise requires:

1. "Business" includes all activities or acts, personal or corporate, that are engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but does not include either:

(a) Casual activities or sales.

(b) The transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system.

2. "Distribution base" means the portion of the revenues derived from the tax levied by this article and articles 5 and 8 of this chapter designated for distribution to counties, municipalities and other purposes according to section 42-5029, subsection D.

3. "Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

4. "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses.

5. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sales are not included as gross income.

6. Gross income and gross proceeds of sales do not include goods, wares or merchandise, or the value thereof, returned by customers if the sale price is refunded either in cash or by credit, or the value of merchandise traded in on the purchase of new merchandise when the trade-in allowance is deducted from the sales price of the new merchandise before completion of the sale.

7. "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. Gross receipts do not include cash discounts allowed and taken or the sale price of property returned by customers if the full sale price is refunded either in cash or by credit.

8. "Marketplace" means a physical or electronic place, platform or forum, including a store, booth, internet website, catalog or dedicated sales software application, where products, including tangible personal property, are offered for sale.

9. "Marketplace facilitator":

(a) Means a person that facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller in a marketplace tangible personal property and, either directly or indirectly, through agreements or arrangements with third parties collecting payment from the purchaser and transmitting that payment to the marketplace seller, regardless of whether the marketplace facilitator receives compensation for the marketplace facilitator's services.

(b) Does not include a payment processor business that is appointed to handle payment transactions from various channels, such as charge cards, credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties.

10. "Marketplace seller" means a person that makes retail sales through any physical or electronic marketplace that is operated by a marketplace facilitator.

11. "Person" or "company" includes an individual, firm, partnership, joint venture, association, corporation, estate, trust, marketplace facilitator or remote seller, this state, any county, city, town, district, other than a school district, or other political subdivision and any other group or combination acting as a unit, and the plural as well as the singular number.

12. "Qualifying community health center":

(a) Means an entity that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(i) The sole provider of primary care in the community.

(ii) A nonhospital affiliated clinic that is located in a federally designated medically underserved area in this state.

(b) Includes clinics that are being constructed as qualifying community health centers.

13. "Qualifying health care organization" means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that uses, saves or invests at least eighty percent of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted auditing standards and filed annually with

the department. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent requirement.

14. "Qualifying health sciences educational institution" means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that solely provides graduate and postgraduate education in the health sciences. For the purposes of this paragraph, "health sciences" includes medicine, nursing, physician's assistant studies, pharmacy, physical therapy, occupational therapy, biomedical sciences, podiatry, clinical psychology, cardiovascular science, nurse anesthesia, dentistry, optometry and veterinary medicine.

15. "Qualifying hospital" means any of the following:

(a) A licensed hospital that is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center that provides medical services, nursing services or health related services and that is not used or held for profit.

(c) A hospital, nursing care institution or residential care institution that is operated by the federal government, this state or a political subdivision of this state.

(d) A facility that is under construction and that on completion will be a facility under subdivision (a), (b) or (c) of this paragraph.

16. "Remote seller" means a person that sells products for delivery into this state and that does not have a physical presence or other legal requirement to obtain a transaction privilege tax license in this state other than because the person's business exceeds the threshold provided in section 42-5044.

17. "Retailer" includes every person engaged in the business classified under the retail classification pursuant to section 42-5061 and, when in the opinion of the department it is necessary for the efficient administration of this article, includes dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

18. "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions and transactions facilitated by a marketplace

facilitator on behalf of a marketplace seller, of tangible personal property or other activities taxable under this chapter, for a consideration, and includes:

(a) Any transaction by which the possession of property is transferred but the seller retains the title as security for the payment of the price.

(b) Fabricating tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work.

(c) Furnishing, preparing or serving for a consideration any tangible personal property consumed on the premises of the person furnishing, preparing or serving the tangible personal property.

19. "Solar daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

20. "Solar energy device" means a system or series of mechanisms that are designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

21. "Tangible personal property" means personal property that may be seen, weighed, measured, felt or touched or that is in any other manner perceptible to the senses.

22. "Taxpayer" means any person who is liable for any tax imposed by this article.

23. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year, if permission is obtained from the department to use a fiscal year as the tax period instead of the calendar year.

24. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale and not for consumption by the purchaser.

#### **42-5003. Administration and enforcement of article; employees; bonds**

A. The administration of this article is vested in and shall be exercised by the department of revenue according to chapter 1, articles 1 and 3 of this title and this article, and all payments required by this article shall be made to the department.

B. The enforcement of this article in any court of the state shall be under the exclusive jurisdiction of the department and the attorney general.

C. The department shall appoint, as necessary, such agents, clerks and stenographers as authorized by law, who shall perform such duties as may be required not inconsistent with this article, and who shall be authorized to act for the department as it prescribes and as provided by this article. Each agent shall execute a bond in the amount of five thousand dollars conditioned upon the faithful discharge of the agent's duties, but the department may, in its discretion, bond all or any of its agents by a multiple or joint bond. The agents, clerks and stenographers may be removed by the department for cause, and the department shall be the final judge of the sufficiency of the cause.

42-5005. Transaction privilege tax and municipal privilege tax licenses; fees; renewal; revocation; violation; classification

A. Every person who receives gross proceeds of sales or gross income on which a transaction privilege tax is imposed by this article and who desires to engage or continue in business shall apply to the department for an annual transaction privilege tax license accompanied by a fee of \$12. A person shall not engage or continue in business until the person has obtained a transaction privilege tax license.

B. A person desiring to engage or continue in business within a city or town that imposes a municipal privilege tax shall apply to the department of revenue for an annual municipal privilege tax license accompanied by a fee of up to \$50, as established by ordinance of the city or town. The person shall submit the fee with each new license application. The person may not engage or continue in business until the person has obtained a municipal privilege tax license. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes. The fee imposed by this subsection does not apply to a marketplace facilitator or remote seller that is only required to obtain a transaction privilege tax license pursuant to section 42-5043.

C. A transaction privilege tax license is valid only for the calendar year in which it is issued, but it may be renewed for the following calendar year. There is no fee for the renewal of the transaction privilege tax license. The transaction privilege tax license must be renewed at the same time and in the manner as the municipal privilege tax license renewal.

D. A municipal privilege tax license is valid only for the calendar year in which it is issued, but it may be renewed for the following calendar year by the payment of a license renewal fee of up to \$50. The renewal fee is due and payable on January 1 and is considered delinquent if not received on or before the last business day of January. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes. The renewal fee imposed by this subsection does not apply to a marketplace facilitator or remote seller

that is only required to obtain a transaction privilege tax license pursuant to section 42-5043.

E. A licensee that remains in business after the municipal privilege tax license has expired is subject to the payment of the license renewal fee and the civil penalty prescribed in section 42-1125, subsection R.

F. If the applicant is not in arrears in payment of any tax imposed by this article, the department shall issue a license authorizing the applicant to engage and continue in business on the condition that the applicant complies with this article. The license number shall be continuous.

G. The transaction privilege tax license and the municipal privilege tax license are not transferable on a complete change of ownership or change of location of the business. For the purposes of this subsection:

1. "Location" means the business address appearing in the application for the license and on the transaction privilege tax or municipal privilege tax license.

2. "Ownership" means any right, title or interest in the business.

3. "Transferable" means the ability to convey or change the right or privilege to engage or continue in business by virtue of the issuance of the transaction privilege tax or municipal privilege tax license.

H. When the ownership or location of a business on which a transaction privilege tax or municipal privilege tax is imposed has been changed within the meaning of subsection G of this section, the licensee shall surrender the license to the department. The license shall be reissued to the new owners or for the new location on application by the taxpayer and payment of the \$12 fee for a transaction privilege tax license and a fee of up to \$50 per jurisdiction for a municipal privilege tax license. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes.

I. A person who is engaged in or conducting a business in two or more locations or under two or more business names shall procure a transaction privilege tax license for each location or business name regardless of whether all locations or business names are reported on a consolidated return under a single transaction privilege tax license number. This requirement shall not be construed as conflicting with section 42-5020.

J. A person who is engaged in or conducting a business in two or more locations or under two or more business names shall procure a municipal privilege tax license for each location or business name regardless of whether all locations or business names are reported on a consolidated return.

K. A person who is engaged in or conducting business at two or more locations or under two or more business names and who files a consolidated return under a single transaction privilege tax license number as provided by section 42-5020 is required to pay only a single municipal privilege tax license renewal fee for each local jurisdiction pursuant to subsection D of this section. A person who is engaged in or conducting business at two or more locations or under two or more business names and who does not file a consolidated return under a single license number is required to pay a license renewal fee for each location or license in a local jurisdiction.

L. For the purposes of this chapter and chapter 6 of this title:

1. Through December 31, 2018, an online lodging marketplace, as defined in section 42-5076, may register with the department for a license for the payment of taxes levied by this state and one or more counties, cities, towns or special taxing districts, at the election of the online lodging marketplace, for taxes due from an online lodging operator on any online lodging transaction facilitated by the online lodging marketplace, subject to sections 42-5076 and 42-6009.

2. Beginning from and after December 31, 2018, an online lodging marketplace, as defined in section 42-5076, shall register with the department for a license for the payment of taxes levied by this state and one or more counties, cities, towns or special taxing districts for taxes due from an online lodging operator on any online lodging transaction facilitated by the online lodging marketplace, subject to sections 42-5076 and 42-6009.

M. For the purposes of this chapter and chapter 6 of this title, a person who is licensed pursuant to title 32, chapter 20 and who files an electronic consolidated tax return for individual real properties under management on behalf of the property owners may be licensed with the department for the payment of taxes levied by this state and by any county, city or town with respect to those properties. There is no fee for a license issued pursuant to this subsection.

N. If a person violates this article or any rule adopted under this article, the department upon hearing may revoke any transaction privilege tax or municipal privilege tax license issued to the person. The department shall provide ten days' written notice of the hearing, stating the time and place and requiring the person to appear and show cause why the license or licenses should not be revoked. The department shall provide written notice to the person of the revocation of the license. The notices may be served personally or by mail pursuant to section 42-5037. After revocation, the department shall not issue a new license to the person unless the person presents evidence satisfactory to the department that the person will comply with this article and with the rules adopted under this article. The department may prescribe the terms under which a revoked license may be reissued.

O. The department may revoke any transaction privilege tax or municipal privilege tax license issued to any person who fails for thirteen consecutive months to make and file

a return required by this article on or before the due date or the due date as extended by the department unless the failure is due to a reasonable cause and not due to wilful neglect.

P. A person who violates any provision of this section is guilty of a class 3 misdemeanor.

**42-5006. Taxpayer bonds; out-of-state licensed contractors and manufactured building dealers**

A. Notwithstanding section 42-1102, the department shall require a surety bond for each taxpayer who is required to be licensed under title 32, chapter 10 or who is regulated under title 41, chapter 37, article 3, if the taxpayer's principal place of business is outside this state or if the taxpayer has conducted business in this state for less than one year. The department shall prescribe the form of the bond. The bond shall be maintained for a period of at least two years.

B. The bond, duly executed by the applicant as principal and with a corporation duly authorized to execute and write bonds in this state as surety, shall be payable to this state and conditioned on the payment of all transaction privilege taxes incurred and imposed on the taxpayer by this state and its political subdivisions. The bond shall be in such amount, but not less than two thousand dollars, as will assure the payment of the transaction privilege taxes which may reasonably be expected to be incurred by the licensed establishment for a period of one hundred fifty days.

C. The director, by rule, may establish classes of expected tax liability in five thousand dollar increments, beginning with the minimum bond amount prescribed in subsection B of this section. The bond shall provide that after notice and a hearing the director may order forfeited to this state and any affected political subdivision part or all of the bond for nonpayment of taxes, interest and penalties.

D. A licensee on application for a new license covered by subsection A of this section, renewal of a license covered by subsection A of this section or transfer of a license covered by subsection A of this section is exempt from posting a bond if the licensee has for at least two years immediately preceding the application made timely payment of all transaction privilege taxes incurred.

E. If a licensee is not exempt from this section, the director may exempt the licensee if the director finds that the surety bond is not necessary to insure payment of such taxes to the state and any affected political subdivision or the licensee had good cause for the late or insufficient payment of the transaction privilege tax and affiliated excise taxes incurred.

#### **42-5007. Taxpayer security; out-of-state prime contractors; definition**

A. In lieu of the bond required under section 42-1102 or 42-5006, a person who is in the construction business, who does not have a principal place of business in this state and who enters into a prime construction contract to be performed in this state, at the time the contract is entered into, shall furnish to the director or the director's agent a surety bond or other acceptable security in an amount equal to the gross receipts to be paid under the contract multiplied by the aggregate rates of the applicable taxes imposed by this chapter to secure payment of the tax imposed by this chapter on the gross receipts from the contract and shall obtain a certificate from the director or the director's agent that the requirements of this section have been met.

B. If the total amount to be paid under the contract is changed by ten per cent or more after the date the bond or other security is furnished, the person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change.

C. If a person fails to comply with subsection A or B of this section, the director or the director's agent may:

1. Demand by certified mail or in person that the person comply. On the person's failure to comply within ten days after the date of the mailing of such demand, the director may institute a proceeding to enjoin the person's business as provided in section 42-1103.

2. When a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from the person on gross receipts from a prime construction contract will not be paid, request the person to comply, and, on failure to comply immediately, the director may without further notice apply to tax court for an injunction under section 42-1103.

D. This section does not apply if the total gross receipts under the construction contract, including any change in such amount, are to be less than fifty thousand dollars.

E. A city, town or county or an agency of this state shall not issue a building or other construction permit to any person who is subject to the requirements of this section without having first been furnished by the construction contractor with the certificate from the director or the director's agent provided under subsection A of this section.

F. In this section "principal place of business" means a location where a person has continuously operated a facility with at least one full-time employee for the preceding twelve consecutive months.

#### **42-5012. Sales between affiliated persons**

In determining value as applied to sales from one to another of affiliated corporations or persons, or other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the department shall prescribe uniform and equitable rules for determining the value upon which the tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.

#### **42-5017. Credit for accounting and reporting expenses; definition**

A. A credit is allowed against the taxes imposed by this article and article 5 of this chapter for expenses incurred by the taxpayer in accounting and reporting those taxes. The credit is:

1. For a taxpayer who files a paper return, one percent of the amount of tax due but not to exceed a total of ten thousand dollars in any calendar year for the combined total of all business premises of the taxpayer.

2. For a taxpayer who files using an electronic filing program established by the department, one and two-tenths percent of the amount of tax due but not to exceed a total of twelve thousand dollars in any calendar year for the combined total of all business premises of the taxpayer.

B. Estimated taxes under section 42-5014, subsection D are not considered a separate reporting period.

C. A taxpayer shall claim the credit for each tax period on forms prescribed and furnished by the department, which may be incorporated in the return form prescribed pursuant to section 42-5014. A claim for credit is not allowed if the taxpayer fails to pay the tax due, plus any estimated tax liability, before the payment becomes delinquent. A claim for the increased credit amount under subsection A, paragraph 2 of this section is not allowed if the taxpayer fails to file using the department's electronic filing program for any taxable period during the calendar year. The department shall recapture any credit amounts claimed by the taxpayer but disallowed.

D. For the purposes of this section, "taxpayer" means the business entity under which the business reports for state income tax purposes or an entity that is exempt from state income tax.

#### **42-5019. Reporting sales made in more than one class**

A person engaged in any business in which sales are made on which the same rate does not apply, or in two or more businesses with respect to which the rate to be applied is not the same, shall make separate returns of the gross proceeds of sales or the gross income of each business separately classified.

#### **42-5020. Persons engaged in more than one business**

Any person engaging in two or more forms of business of like classification taxable under this article may file a consolidated return covering all business activities of like classification engaged in within this state.

#### **42-5024. Personal liability for tax; remedies for collection**

Every tax imposed by this article and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the state and may be collected by legal action under section 42-1114. Such remedy shall be in addition to existing remedies or those provided in this article.

#### **42-5044. Nexus; out-of-state businesses; threshold; applicability; rulemaking; reporting; definition**

A. Notwithstanding any other law, any person that conducts business in an activity classified under section 42-5061 with purchasers in this state is engaging or continuing in business in this state, is subject to this article and shall pay the taxes levied under this article, section 42-5061 and chapter 6 of this title and any duly enacted special district transaction privilege taxes imposed under title 48 on retail sales of tangible personal property if the person meets either of the following criteria in the previous or current calendar year:

1. If the person is a remote seller, the gross proceeds of sales or gross income derived from the remote seller's business with customers in this state pursuant to section 42-5061 that is not facilitated by a marketplace facilitator is more than the following:

(a) For calendar year 2019, \$200,000.

(b) For calendar year 2020, \$150,000.

(c) For calendar year 2021 and for each calendar year thereafter, \$100,000.

2. If the person is a marketplace facilitator, the gross proceeds of sales or gross income derived from the marketplace facilitator's business on its own behalf or on behalf of at least one marketplace seller with customers in this state pursuant to section 42-5061 is more than \$100,000.

B. For the purpose of determining whether a person meets any of the criteria prescribed in subsection A of this section, all affiliated persons shall be aggregated.

C. If the threshold provided in subsection A of this section was not met in the previous calendar year and is met partway through the current calendar year, the person shall obtain a transaction privilege tax license from the department once the threshold is met and begin remitting the tax on the first day of the month that starts at least thirty days after the threshold is met for the remaining of the current year and the next calendar year. If the person does not meet the threshold in the next calendar year, the person is not required to remit the transaction privilege tax for the calendar year following that calendar year and may cancel the person's transaction privilege tax license. If the threshold is met in a subsequent calendar year, the person shall remit the transaction privilege tax pursuant to this section.

D. The department may adopt rules pursuant to title 41, chapter 6 to carry out this section.

E. A marketplace facilitator shall report the tax due under this section from transactions facilitated on behalf of marketplace sellers. A marketplace facilitator may report the tax due under this section with the tax collected from transactions made directly by the marketplace facilitator on a combined tax return or on a separate return.

F. For the purposes of this section, "affiliated person" means a person that, with respect to another person, either:

1. Has an ownership interest of more than five percent, whether direct or indirect, in that other person.

2. Is related to the other person because a third person, or a group of third persons that are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

#### **42-5062. Transporting classification**

A. The transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state. The transporting classification does not include:

1. Transporting for hire persons, freight or property by:
  - (a) Motor carriers subject to a fee prescribed in title 28, chapter 16, article 4.
  - (b) Light motor vehicles subject to a fee under title 28, chapter 15, article 4.
  - (c) Transportation network companies subject to a fee prescribed pursuant to section 28-9552.
  - (d) Transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.
  - (e) Vehicle for hire companies that are issued permits pursuant to section 28-9503.
  - (f) Vehicle for hire drivers operating under a company permit issued pursuant to section 28-9503 on transactions involving vehicle for hire services.
2. The business of transporting for hire persons traveling in air commerce by aircraft if taxation of the business is preempted by federal law.
3. Ambulances or ambulance services provided under title 48 or certified pursuant to title 36, chapter 21.1 or provided by a city or town in a county with a population of less than one hundred fifty thousand persons as determined in the most recent United States decennial census.
4. Public transportation program services for the dial-a-ride programs and special needs transportation services.
5. Transporting freight or property for hire by a railroad operating exclusively in this state if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this state to a point outside this state or from a point outside this state to a point in this state. For the purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.
6. Arranging transportation as a convenience or service to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third-party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

B. The tax base for the transporting classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

1. The gross proceeds of sales or gross income derived from transporting for hire persons, freight or property by a railroad pursuant to a contract with another railroad that is also considered to be engaged in the businesses of transporting persons, freight or property for hire if the other railroad is liable for the tax on gross proceeds of sales or gross income attributable to the transportation.

2. The gross proceeds of sales or gross income derived from business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

3. The gross proceeds of sales or gross income derived from a business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5073, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

4. The gross proceeds of sales or gross income derived from business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

5. The gross proceeds of sales or gross income derived from transporting fertilizer by a railroad from a point in this state to another point in this state.

#### **42-5063. Utilities classification; definitions**

A. The utilities classification is comprised of the business of:

1. Producing and furnishing or furnishing to consumers natural or artificial gas and water.

2. Providing to retail electric customers ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity.

B. The utilities classification does not include:

1. Sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity, gas or water to a person who resells the services.

2. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

3. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

4. Sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services that are related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

5. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

6. The leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in business under this section.

(b) To a person that is engaged in business under this section or section 42-5064 or that is a cable operator.

C. The tax base for the utilities classification is the gross proceeds of sales or gross income derived from the business, but the following shall be deducted from the tax base:

1. Revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

2. Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This deduction shall not exceed the value of such property and equipment.

3. Gross proceeds of sales or gross income derived from sales to:

(a) Qualifying hospitals as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

4. The portion of gross proceeds of sales or gross income that is derived from sales to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 of a utility product and that is used directly in environmental technology manufacturing, producing or processing. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of a qualified environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

5. The portion of gross proceeds of sales or gross income attributable to transfers of electricity by any retail electric customer owning a solar photovoltaic energy generating system to an electric distribution system, if the electricity transferred is generated by the customer's system.

6. Gross proceeds of sales or gross income derived from sales of electricity, natural gas or liquefied petroleum gas to a qualified manufacturing or smelting business. A utility that claims this deduction shall report each month, on a form prescribed by the department, the name and address of each qualified manufacturing or smelting business for which this deduction is taken. This paragraph applies to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include job printing, publishing, packaging, mining, generating electricity or operating a restaurant.

(c) "Qualified manufacturing or smelting business" means one of the following:

(i) A business that manufactures or smelts tangible products in this state, of which at least fifty-one percent of the manufactured or smelted products will be exported out of state for incorporation into another product or sold out of state for a final sale.

(ii) A business that derives at least fifty-one percent of its gross income from the sale of manufactured or smelted products manufactured or smelted by the business.

(iii) A business that uses at least fifty-one percent of its square footage in this state for manufacturing or smelting and business activities directly related to manufacturing or smelting.

(iv) A business that employs at least fifty-one percent of its workforce in this state in manufacturing or smelting and business activities directly related to manufacturing or smelting.

(v) A business that uses at least fifty-one percent of the value of its capitalized assets in this state, as reflected on the business's books and records, for manufacturing or smelting and business activities directly related to manufacturing or smelting.

(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

7. Gross proceeds of sales or gross income derived from sales of electricity or natural gas to a business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.

D. For the purposes of this section:

1. "Ancillary services" means those services so designated in federal energy regulatory commission order 888 adopted in 1996 that include the services necessary to support the transmission of electricity from resources to loads while maintaining reliable operation of the transmission system according to good utility practice.

2. "Cable operator" has the same meaning prescribed in section 9-505 and includes a video service provider.

3. "Electric distribution service" means distributing electricity to retail electric customers through the use of electric distribution facilities.

4. "Electric generation service" means providing electricity for sale to retail electric customers but excluding electric distribution or transmission services.

5. "Electric transmission service" means transmitting electricity to retail electric customers or to electric distribution facilities so classified by the federal energy regulatory commission or, to the extent permitted by law, so classified by the Arizona corporation commission.

6. "Other services" includes metering, meter reading services, billing and collecting services.

7. "Retail electric customer" means a person who purchases electricity for that person's own use, including use in that person's trade or business and not for resale, redistribution or retransmission.

8. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

#### **42-5065. Publication classification; definition**

A. The publication classification is comprised of the business of publishing newspapers, magazines or other periodicals and publications if published in this state. The publication classification does not include:

1. Manufacturing or publishing books.
2. Sales of magazines or other periodicals or other publications by this state to encourage tourist travel.

B. The tax base for the publication classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from notices and subscription income, but the following shall be deducted from the tax base:

1. Gross income derived from advertising.
2. Gross proceeds of sales or gross income derived from sales of personal property to:
  - (a) Qualifying hospitals as defined in section 42-5001.
  - (b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.
  - (c) A qualifying health sciences educational institution as defined in section 42-5001.

C. For purposes of this section "subscription income" includes all circulation revenue, except amounts actually retained by or credited to carriers and other vendors as compensation for sale or delivery of publications and revenue from publications sold, directly or through wholesalers or jobbers, to retailers for resale.

#### **42-5066. Job printing classification**

A. The job printing classification is comprised of the business of job printing, engraving, embossing and copying.

B. The tax base for the job printing classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person in this state who has a transaction privilege tax license issued in this state, and who does either of the following:

(a) Resells the job printing, engraving, embossing or copying.

(b) Distributes such printing, engraving, embossing or copying without consideration in connection with the publication of a newspaper or magazine.

2. Sales of job printing, engraving, embossing and copying for use outside this state if the materials are shipped or delivered out of this state regardless of where title to the materials passes or their free on board point.

3. Sales of personal property to:

(a) Qualifying hospitals as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health sciences educational institution as defined in section 42-5001.

4. Sales of postage and freight except that the amount deducted shall not exceed the actual postage and freight expense that is paid to the United States postal service or a commercial delivery service and that is separately itemized by the taxpayer on the customer's invoice and in the taxpayer's records.

#### **42-5069. Commercial lease classification; definitions**

A. The commercial lease classification is comprised of the business of leasing for a consideration the use or occupancy of real property.

B. A person who, as a lessor, leases or rents for a consideration under one or more leases or rental agreements the use or occupancy of real property that is used by the lessee for commercial purposes is deemed to be engaged in business and subject to the tax imposed by article 1 of this chapter, but this subsection does not include leases or rentals of real property used for residential or agricultural purposes.

C. The commercial lease classification does not include:

1. Any business activities that are classified under the transient lodging classification.
2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by those entities.
3. Leasing real property to a lessee who subleases the property if the lessee is engaged in business classified under the commercial lease classification or the transient lodging classification.
4. Leasing real property pursuant to a written lease agreement entered into before December 1, 1967. This exclusion does not apply to the businesses of hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile storage garages, parking lots or tourist camps, or to the extension or renewal of any such written lease agreement.
5. Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph:
  - (a) "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, affiliated persons hold a controlling interest in both the lessor and the lessee, or an unrelated person holds a controlling interest in both the lessor and lessee.
  - (b) "Affiliated persons" means members of an individual's family or persons who have ownership or control of a business entity.
  - (c) "Controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.
  - (d) "Members of an individual's family" means the individual's spouse and brothers and sisters, whether by whole or half blood, including adopted persons, ancestors and lineal descendants.
  - (e) "Reciprocal insurers" has the same meaning prescribed in section 20-762.
6. Leasing real property for boarding horses.
7. Leasing or renting real property or the right to use real property at exhibition events in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams or a national

touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

8. Leasing or renting real property or the right to use real property for use as a rodeo featuring primarily farm and ranch animals in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

9. Leasing or renting dwelling units, lodging facilities or trailer or mobile home spaces if the units, facilities or spaces are intended to serve as the principal or permanent place of residence for the lessee or renter or if the unit, facility or space is leased or rented to a single tenant thirty or more consecutive days.

10. Leasing or renting real property and improvements for use primarily for religious worship by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

11. Leasing, renting or granting the right to use real property to vendors or exhibitors by a trade or industry association that is a qualifying organization pursuant to section 513(d)(3)(C) of the internal revenue code for a period not to exceed twenty-one days in connection with an event that meets all of the following conditions:

(a) The majority of such vending or exhibition activities relate to the nature of the trade or business sponsoring the event.

(b) The event is held in conjunction with a formal business meeting of the trade or industry association.

(c) The event is organized by the persons engaged in the particular trade or industry.

12. Leasing, renting or granting the right to use real property for a period not to exceed twenty-one days by a coliseum, civic center, civic plaza, convention center, auditorium or arena owned by this state or any of its political subdivisions.

13. Leasing or subleasing real property used by a nursing care institution as defined in section 36-401 that is licensed pursuant to title 36, chapter 4.

14. Leasing or renting an eligible facility as defined in section 28-7701.

15. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph

does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à prendre, but the tax base for the grant of such a leasehold right, if the gross income derived from the grant is not separately stated from the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. For the purposes of this paragraph, "profit à prendre" means a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit.

16. The leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

D. The tax base for the commercial lease classification is the gross proceeds of sales or gross income derived from the business, but reimbursements to the lessor for utility service shall be deducted from the tax base.

E. Notwithstanding section 42-1104, subsection B, paragraph 1, subdivision (b) and paragraph 2, the failure to file tax returns for the commercial lease classification that report gross income derived from any agreement that constitutes, in whole or in part, a grant of a right of profit à prendre for the severance of minerals does not constitute an exception to the general rule for the statute of limitations.

F. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed in section 9-505 and includes a video service provider.

2. "Leasing" includes renting.

3. "Real property" includes any improvements, rights or interest in such property.

4. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

#### **42-5070. Transient lodging classification; definition**

A. The transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab that is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

B. The transient lodging classification does not include:

1. Operating a convalescent home or facility, home for the aged, hospital, jail, military installation or fraternity or sorority house or operating any structure exclusively by an association, institution, governmental agency or corporation for religious, charitable or educational purposes, if no part of the net earnings of the association, corporation or other entity inures to the benefit of any private shareholder or individual.

2. A lease or rental of a mobile home or house trailer at a fixed location or any other similar structure, and also including a space, lot or slab that is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy for thirty or more consecutive days.

3. Leasing or renting four or fewer rooms of an owner-occupied residential home, together with furnishing no more than a breakfast meal, to transient lodgers at no more than a fifty percent average annual occupancy rate.

4. The activities of any online lodging marketplace, as defined in section 42-5076.

C. The tax base for the transient lodging classification is the gross proceeds of sales or gross income derived from the business, except that the tax base does not include:

1. The gross proceeds of sales or gross income derived from business activity that is properly included in another business classification under this article and that is taxable to the person engaged in that business classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

2. The gross proceeds or gross income received by an online lodging operator, as defined in section 42-5076, from any online lodging transactions, as defined in section 42-5076, for which the online lodging operator has received documentation from a registered online lodging marketplace, as defined in section 42-5076, pursuant to section 42-5009, subsection P that the online lodging marketplace has remitted or will remit the applicable tax to the department pursuant to section 42-5014, subsection E.

D. For the purposes of this section, the tax base for the transient lodging classification does not include gross proceeds of sales or gross income derived from:

1. Transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this article.
  2. Transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under section 42-5062 or 42-5073 due to an exclusion, exemption or deduction.
  3. Commissions paid to a person that is engaged in transient lodging business subject to taxation under this section by a person providing services or property to the customers of the person engaging in the transient lodging business.
- E. The department shall separately account for revenues collected under the transient lodging classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).
- F. For the purposes of this section, "transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty consecutive days.

#### **42-5071. Personal property rental classification; definitions**

- A. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. The tax does not apply to:
1. Leasing or renting films, tapes or slides used by theaters or movies, which are engaged in business under the amusement classification, or used by television stations or radio stations.
  2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by such entities.
  3. Leasing or renting tangible personal property by a parent corporation to a subsidiary corporation or by a subsidiary corporation to another subsidiary of the same parent corporation if taxes were paid under this chapter on the gross proceeds or gross income accruing from the initial sale of the tangible personal property. For the purposes of this paragraph, "subsidiary" means a corporation of which at least eighty percent of the voting shares are owned by the parent corporation.
  4. Operating coin-operated washing, drying and dry cleaning machines or coin-operated car washing machines at establishments for the use of such machines.
  5. Leasing or renting tangible personal property for incorporation into or comprising any part of a qualified environmental technology facility as described in section 41-1514.02. This paragraph shall apply for ten full consecutive calendar or fiscal years following the

initial lease or rental by each qualified environmental technology manufacturer, producer or processor.

6. Leasing or renting aircraft, flight simulators or similar training equipment to students or staff by nonprofit, accredited educational institutions that offer associate or baccalaureate degrees in aviation or aerospace related fields.

7. Leasing or renting photographs, transparencies or other creative works used by this state on internet websites, in magazines or in other publications that encourage tourism.

8. Leasing or renting certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

9. The leasing or renting of space to make attachments to utility poles, as follows:

(a) By a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

(b) To a person that is engaged in business under section 42-5063 or 42-5064 or that is a cable operator.

B. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Reimbursements by the lessee to the lessor of a motor vehicle for payments by the lessor of the applicable fees and taxes imposed by sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter 15, article 2 and article IX, section 11, Constitution of Arizona, to the extent such amounts are separately identified as such fees and taxes and are billed to the lessee.

2. Leases or rentals of tangible personal property that, if it had been purchased instead of leased or rented by the lessee, would have been exempt under:

(a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29, 49 or 53.

(b) Section 42-5061, subsection B, except that a lease or rental of new machinery or equipment is not exempt pursuant to:

(i) Section 42-5061, subsection B, paragraph 13 if the lease is for less than two years.

(ii) Section 42-5061, subsection B, paragraph 21.

(c) Section 42-5061, subsection I, paragraph 1.

(d) Section 42-5061, subsection M.

3. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739 and sales of aviation fuel that are subject to the tax imposed under section 28-8344.

4. Leasing or renting a motor vehicle subject to and on which the fee has been paid under title 28, chapter 16, article 4.

5. Amounts received by a motor vehicle dealer for the first month of a lease payment if the lease and the lease payment for the first month of the lease are transferred to a third-party leasing company.

C. Sales of tangible personal property to be leased or rented to a person engaged in a business classified under the personal property rental classification are deemed to be resale sales.

D. In computing the tax base, the gross proceeds of sales or gross income from the lease or rental of a motor vehicle does not include any amount attributable to the car rental surcharge under section 5-839, 28-5810 or 48-4234.

E. Until December 31, 1988, leasing or renting animals for recreational purposes is exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from leasing or renting animals for recreational purposes is subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the monies paid as taxes will be returned to the customer.

F. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed by section 9-505.

2. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

#### **42-5072. Mining classification; definition**

A. The mining classification is comprised of the business of mining, quarrying or producing for sale, profit or commercial use any nonmetalliferous mineral product that

has been mined, quarried or otherwise extracted within the boundaries of this state described in article I, section 1, Constitution of Arizona.

B. The tax base for the mining classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from sales described under section 42-5061, subsection A, paragraph 27 and subsection I, paragraph 2 shall be deducted from the tax base.

C. The tax base includes the value of the entire product mined, quarried or produced for sale, profit or commercial use in this state, regardless of the place of sale of the product or of the fact that deliveries may be made to points without this state. If, however, the sale price of the product includes freight, the sale price shall be reduced by the actual freight paid by any person from the place of production to the place of delivery.

D. In the case of a person engaged in business classified under the mining classification all or part of whose income is derived from service or manufacturing charges instead of from sales of the products manufactured or handled, the tax base includes the gross income of the person derived from the service or manufacturing charge.

E. If a person engaging in business classified under the mining classification ships or transports all or part of a product out of this state without making sale of the product or ships his product outside of this state in an unfinished condition, the value of the product or article in the condition or form in which it existed when transported out of this state and before it enters interstate commerce is included in the tax base, and the department shall prescribe equitable and uniform rules for ascertaining that value. In determining the tax base, if the product or any part of the product has been processed in this state and the proceeds of such processing have been included in the tax base of the processor under this chapter, the person may deduct from the value of the product when transported out of this state the cost of such processing.

F. A person who conducts a business classified under the mining classification may be deemed also to be engaged in business classified under the retail classification to the extent the person's activities comprise business under the retail classification if the tax is paid at the rate imposed on the retail classification by section 42-5010. If the transaction is not subject to taxation under the retail classification, the transaction shall be included in the tax base under this section, except for the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

1. The transfer of title or possession of the coal is for the purpose of refining the coal.
2. The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this

paragraph, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

G. For the purposes of this section, "nonmetalliferous mineral product" means oil, natural gas, limestone, sand, gravel or any other nonmetalliferous mineral product, compound or combination of nonmetalliferous mineral products.

#### **42-5074. Restaurant classification**

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.
2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.
3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), that do not regularly engage or continue in the restaurant business for the purpose of fund-raising.
4. Sales by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

7. Sales to qualifying hospitals as defined in section 42-5001.

8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

9. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

10. Sales of articles of prepared or unprepared food, drink or condiment and accessory tangible personal property to a school district or charter school if the articles and accessory tangible personal property are served to persons for consumption on the premises of a public school in the school district or charter school during school hours.

11. Prepared food, drink or condiment donated by a restaurant to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

12. Sales of articles of food and drink at low or reduced prices to eligible elderly, disabled or homeless persons by a restaurant that contracts with the department of economic security and that is approved by the food and nutrition services of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases of the articles of food and drink are made with the benefits issued pursuant to the supplemental nutrition assistance program.

C. The tax imposed on the restaurant classification pursuant to this section does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this subsection, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

D. The department shall separately account for revenues collected under the restaurant classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

E. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the restaurant classification from businesses operating restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments:

1. On the premises of a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8 for consumption on or off the premises.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

#### **42-5075. Prime contracting classification; exemptions; definitions**

A. The prime contracting classification is comprised of the business of prime contracting and the business of manufactured building dealer. Sales for resale to another manufactured building dealer are not subject to tax. Sales for resale do not include sales to a lessor of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter.

B. The tax base for the prime contracting classification is sixty-five percent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

1. The sales price of land, which shall not exceed the fair market value.

2. Sales and installation of groundwater measuring devices required under section 45-604 and groundwater monitoring wells required by law, including monitoring wells installed for acquiring information for a permit required by law.

3. The sales price of furniture, furnishings, fixtures, appliances and attachments that are not incorporated as component parts of or attached to a manufactured building or the setup site. The sale of such items may be subject to the taxes imposed by article 1 of this chapter separately and distinctly from the sale of the manufactured building.

4. The gross proceeds of sales or gross income received from a contract entered into for the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement located in a military

reuse zone for providing aviation or aerospace services or for a manufacturer, assembler or fabricator of aviation or aerospace products within an active military reuse zone after the zone is initially established or renewed under section 41-1531. To be eligible to qualify for this deduction, before beginning work under the contract, the prime contractor must have applied for a letter of qualification from the department of revenue.

5. The gross proceeds of sales or gross income derived from a contract to construct a qualified environmental technology manufacturing, producing or processing facility, as described in section 41-1514.02, and from subsequent construction and installation contracts that begin within ten years after the start of initial construction. To qualify for this deduction, before beginning work under the contract, the prime contractor must obtain a letter of qualification from the department of revenue. This paragraph shall apply for ten full consecutive calendar or fiscal years after the start of initial construction.

6. The gross proceeds of sales or gross income from a contract to provide for one or more of the following actions, or a contract for site preparation, constructing, furnishing or installing machinery, equipment or other tangible personal property, including structures necessary to protect exempt incorporated materials or installed machinery or equipment, and tangible personal property incorporated into the project, to perform one or more of the following actions in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

(a) Actions to monitor, assess and evaluate such a release or a suspected release.

(b) Excavation, removal and transportation of contaminated soil and its treatment or disposal.

(c) Treatment of contaminated soil by vapor extraction, chemical or physical stabilization, soil washing or biological treatment to reduce the concentration, toxicity or mobility of a contaminant.

(d) Pumping and treatment or in situ treatment of contaminated groundwater or surface water to reduce the concentration or toxicity of a contaminant.

(e) The installation of structures, such as cutoff walls or caps, to contain contaminants present in groundwater or soil and prevent them from reaching a location where they could threaten human health or welfare or the environment.

This paragraph does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities or other control items

required or to be used by a person to prevent or control contamination before it reaches the environment.

7. The gross proceeds of sales or gross income that is derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or that is exempt from use tax under section 42-5159, subsection B and that has independent functional utility, pursuant to the following provisions:

(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:

(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.

(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property that is either deducted from the tax base of the retail classification under section 42-5061, subsection B or exempt from use tax under section 42-5159, subsection B.

(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.

(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:

(i) Assembling the machinery, equipment or other tangible personal property.

(ii) Connecting items of machinery, equipment or other tangible personal property to each other.

(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.

(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other similar nonpermanent connections to either real property or real property improvements.

8. The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under:

(a) Section 42-5061, subsection A, paragraph 25, 29, 57 or 59.

(b) Section 42-5061, subsection B.

(c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b), (c), (d), (e), (f), (j), (k), (m) or (n) or paragraph 54 or 56.

(d) Section 42-5159, subsection B.

9. The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, cooling and packaging of eggs.

10. The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the modification of any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

11. The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of clean rooms that are deducted from the tax base of the retail classification pursuant to section 42-5061, subsection B, paragraph 16.

12. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

13. For taxable periods beginning from and after December 31, 1996 and ending before January 1, 2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the

department as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

14. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a launch site, as defined in 14 Code of Federal Regulations section 401.5.

15. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a domestic violence shelter that is owned and operated by a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code.

16. The gross proceeds of sales or gross income derived from contracts to perform postconstruction treatment of real property for termite and general pest control, including wood destroying organisms.

17. The gross proceeds of sales or gross income received from contracts entered into before July 1, 2006 for constructing a state university research infrastructure project if the project has been reviewed by the joint committee on capital review before the university enters into the construction contract for the project. For the purposes of this paragraph, "research infrastructure" has the same meaning prescribed in section 15-1670.

18. The gross proceeds of sales or gross income received from a contract for the construction of any building, or other structure, project, development or improvement owned by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516 if actual construction begins before January 1, 2024. To qualify for this deduction, the prime contractor must obtain a letter of qualification from the Arizona commerce authority before beginning work under the contract.

19. Any amount of the gross proceeds of sales or gross income attributable to development fees that are incurred in relation to a contract for construction, development or improvement of real property and that are paid by a prime contractor or subcontractor. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the prime contractor or subcontractor, and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public

infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

20. The gross proceeds of sales or gross income derived from a contract entered into for the construction of a mixed waste processing facility that is located on a municipal solid waste landfill and that is constructed for the purpose of recycling solid waste or producing renewable energy from landfill waste. For the purposes of this paragraph:

(a) "Mixed waste processing facility" means a solid waste facility that is owned, operated or used for the treatment, processing or disposal of solid waste, recyclable solid waste, conditionally exempt small quantity generator waste or household hazardous waste. For the purposes of this subdivision, "conditionally exempt small quantity generator waste", "household hazardous waste" and "solid waste facility" have the same meanings prescribed in section 49-701, except that solid waste facility does include a site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material.

(b) "Municipal solid waste landfill" has the same meaning prescribed in section 49-701.

(c) "Recycling" means collecting, separating, cleansing, treating and reconstituting recyclable solid waste that would otherwise become solid waste, but does not include incineration or other similar processes.

(d) "Renewable energy" has the same meaning prescribed in section 41-1511.

C. Entitlement to the deduction pursuant to subsection B, paragraph 7 of this section is subject to the following provisions:

1. A prime contractor may establish entitlement to the deduction by both:

(a) Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the base.

(b) Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the deductibility of the property under section 42-5061, subsection B, and a certification that the person

executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the prime contractor has reason to believe that the information contained in the certificate is not accurate or complete.

2. A person who does not comply with paragraph 1 of this subsection may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

3. The department may prescribe a form for the certificate described in paragraph 1, subdivision (b) of this subsection. The department may also adopt rules that describe the transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided in paragraph 1, subdivision (b) of this subsection but must instead obtain such additional information as required in order to be entitled to the deduction.

4. If a prime contractor is entitled to a deduction by complying with paragraph 1 of this subsection, the department may require the purchaser who caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate that would entitle the prime contractor to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the prime contractor would have been required to pay under article 1 of this chapter if the prime contractor had not complied with paragraph 1 of this subsection. Payment of the amount under this paragraph exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as a transaction privilege tax to the purchaser and as tax revenues collected from the prime contractor in order to designate the distribution base for purposes of section 42-5029.

D. Subcontractors or others who perform modification activities are not subject to tax if they can demonstrate that the job was within the control of a prime contractor or contractors or a dealership of manufactured buildings and that the prime contractor or dealership is liable for the tax on the gross income, gross proceeds of sales or gross receipts attributable to the job and from which the subcontractors or others were paid.

E. Amounts received by a contractor for a project are excluded from the contractor's gross proceeds of sales or gross income derived from the business if the person who hired the contractor executes and provides a certificate to the contractor stating that the person providing the certificate is a prime contractor and is liable for the tax under article 1 of this chapter. The department shall prescribe the form of the certificate. If the contractor has reason to believe that the information contained on the certificate is erroneous or incomplete, the department may disregard the certificate. If the person who provides the certificate is not liable for the tax as a prime contractor, that person is

nevertheless deemed to be the prime contractor in lieu of the contractor and is subject to the tax under this section on the gross receipts or gross proceeds received by the contractor.

F. Every person engaging or continuing in this state in the business of prime contracting or dealership of manufactured buildings shall present to the purchaser of such prime contracting or manufactured building a written receipt of the gross income or gross proceeds of sales from such activity and shall separately state the taxes to be paid pursuant to this section.

G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the prime contracting classification from any prime contractor engaged in the preparation or construction of a multipurpose facility, and related infrastructure, that is owned, operated or leased by the tourism and sports authority pursuant to title 5, chapter 8.

H. For the purposes of section 42-5032.02, from and after September 30, 2013, the department shall separately account for revenues reported and collected under the prime contracting classification from any prime contractor engaged in the construction of any buildings and associated improvements that are for the benefit of a manufacturing facility. For the purposes of this subsection, "associated improvements" and "manufacturing facility" have the same meanings prescribed in section 42-5032.02.

I. The gross proceeds of sales or gross income derived from a contract for lawn maintenance services are not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.

J. Except as provided in subsection O of this section, the gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building irrigation berms, installing railroad ties and installing underground sprinkler or watering systems.

K. The portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection,

"direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

L. Operating a landfill or a solid waste disposal facility is not subject to taxation under this section, including filling, compacting and creating vehicle access to and from cell sites within the landfill. Constructing roads to a landfill or solid waste disposal facility and constructing cells within a landfill or solid waste disposal facility may be deemed prime contracting under this section.

M. The following apply in determining the taxable situs of sales of manufactured buildings:

1. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site or to perform the setup in this state, the taxable situs is the setup site.

2. For sales in this state where the manufactured building dealer does not contract to deliver the building to a setup site or does not perform the setup, the taxable situs is the location of the dealership where the building is delivered to the buyer.

3. For sales in this state where the manufactured building dealer contracts to deliver the building to a setup site that is outside this state, the situs is outside this state and the transaction is excluded from tax.

N. The gross proceeds of sales or gross income attributable to a written contract for design phase services or professional services, executed before modification begins and with terms, conditions and pricing of all of these services separately stated in the contract from those for construction phase services, is not subject to tax under this section, regardless of whether the services are provided sequential to or concurrent with prime contracting activities that are subject to tax under this section. This subsection does not include the gross proceeds of sales or gross income attributable to construction phase services. For the purposes of this subsection:

1. "Construction phase services" means services for the execution and completion of any modification, including the following:

- (a) Administration or supervision of any modification performed on the project, including team management and coordination, scheduling, cost controls, submittal process management, field management, safety program, close-out process and warranty period services.

- (b) Administration or supervision of any modification performed pursuant to a punch list. For the purposes of this subdivision, "punch list" means minor items of modification work performed after substantial completion and before final completion of the project.

(c) Administration or supervision of any modification performed pursuant to change orders. For the purposes of this subdivision, "change order" means a written instrument issued after execution of a contract for modification work, providing for all of the following:

(i) The scope of a change in the modification work, contract for modification work or other contract documents.

(ii) The amount of an adjustment, if any, to the guaranteed maximum price as set in the contract for modification work. For the purposes of this item, "guaranteed maximum price" means the amount guaranteed to be the maximum amount due to a prime contractor for the performance of all modification work for the project.

(iii) The extent of an adjustment, if any, to the contract time of performance set forth in the contract.

(d) Administration or supervision of any modification performed pursuant to change directives. For the purposes of this subdivision, "change directive" means a written order directing a change in modification work before agreement on an adjustment of the guaranteed maximum price or contract time.

(e) Inspection to determine the dates of substantial completion or final completion.

(f) Preparation of any manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work. For the purposes of this subdivision, "as-built drawing" means a drawing that indicates field changes made to adapt to field conditions, field changes resulting from change orders or buried and concealed installation of piping, conduit and utility services.

(g) Preparation of status reports after modification work has begun detailing the progress of work performed, including preparation of any of the following:

(i) Master schedule updates.

(ii) Modification work cash flow projection updates.

(iii) Site reports made on a periodic basis.

(iv) Identification of discrepancies, conflicts or ambiguities in modification work documents that require resolution.

(v) Identification of any health and safety issues that have arisen in connection with the modification work.

(h) Preparation of daily logs of modification work, including documentation of personnel, weather conditions and on-site occurrences.

(i) Preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.

(j) Administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.

2. "Design phase services" means services for developing and completing a design for a project that are not construction phase services, including the following:

(a) Evaluating surveys, reports, test results or any other information on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.

(b) Evaluating any criteria or programming objectives for the project to ascertain requirements for the project, such as physical requirements affecting cost or projected utilization of the project.

(c) Preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.

(d) Preparing an initial schedule for the project, excluding the preparation of updates to the master schedule after modification work has begun.

(e) Preparing preliminary estimates of costs of modification work before completion of the final design of the project, including an estimate or schedule of values for any of the following:

(i) Labor, materials, machinery and equipment, tools, water, heat, utilities, transportation and other facilities and services used in the execution and completion of modification work, regardless of whether they are temporary or permanent or whether they are incorporated in the modifications.

(ii) The cost of labor and materials to be furnished by the owner of the real property.

(iii) The cost of any equipment of the owner of the real property to be assigned by the owner to the prime contractor.

(iv) The cost of any labor for installation of equipment separately provided by the owner of the real property that has been designed, specified, selected or specifically provided for in any design document for the project.

(v) Any fee paid by the owner of the real property to the prime contractor pursuant to the contract for modification work.

(vi) Any bond and insurance premiums.

(vii) Any applicable taxes.

(viii) Any contingency fees for the prime contractor that may be used before final completion of the project.

(f) Reviewing and evaluating cost estimates and project documents to prepare recommendations on site use, site improvements, selection of materials, building systems and equipment, modification feasibility, availability of materials and labor, local modification activity as related to schedules and time requirements for modification work.

(g) Preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.

3. "Professional services" means architect services, assayer services, engineer services, geologist services, land surveying services or landscape architect services that are within the scope of those services as provided in title 32, chapter 1 and for which gross proceeds of sales or gross income has not otherwise been deducted under subsection K of this section.

O. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property is not subject to tax under this section if the contract does not include modification activities, except as specified in this subsection. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax under this section. For the purposes of this subsection:

1. Tangible personal property that is incorporated or fabricated into a project described in this subsection may be subject to the amount prescribed in section 42-5008.01.

2. Each contract is independent of any other contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this chapter, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax

treatment of the contract to which the scope of work of the subsequent change order directly relates.

P. Notwithstanding subsection O of this section, a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 is taxable under this section, even if the contract also includes vertical improvements. Agencies that are subject to procurement processes under those provisions shall include in the request for proposals a notice to bidders when those projects are subject to this section. This subsection does not apply to contracts with:

1. Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.

2. Any special taxing district not specified in paragraph 1 of this subsection if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

Q. Notwithstanding subsection R, paragraph 10 of this section, a person owning real property who enters into a contract for sale of the real property, who is responsible to the new owner of the property for modifications made to the property in the period subsequent to the transfer of title and who receives a consideration for the modifications is considered a prime contractor solely for purposes of taxing the gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title. The original owner's gross proceeds of sale or gross income received for the modifications shall be determined according to the following methodology:

1. If any part of the contract for sale of the property specifies amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title, the amounts are included in the original owner's gross proceeds of sale or gross income under this section. Proceeds from the sale of the property that are received after transfer of title and that are unrelated to the modifications made subsequent to the transfer of title are not considered gross proceeds of sale or gross income from the modifications.

2. If the original owner enters into an agreement separate from the contract for sale of the real property providing for amounts to be paid to the original owner for the modifications to be made in the period subsequent to the transfer of title to the property,

the amounts are included in the original owner's gross proceeds of sale or gross income received for the modifications made subsequent to the transfer of title.

3. If the original owner is responsible to the new owner for modifications made to the property in the period subsequent to the transfer of title and derives any gross proceeds of sale or gross income from the project subsequent to the transfer of title other than a delayed disbursement from escrow unrelated to the modifications, it is presumed that the amounts are received for the modifications made subsequent to the transfer of title unless the contrary is established by the owner through its books, records and papers kept in the regular course of business.

4. The tax base of the original owner is computed in the same manner as a prime contractor under this section.

R. For the purposes of this section:

1. "Alteration" means an activity or action that causes a direct physical change to existing property. For the purposes of this paragraph:

(a) For existing property that is properly classified as class two property under section 42-12002, paragraph 1, subdivision (c) or paragraph 2, subdivision (c) and that is used for residential purposes, class three property under section 42-12003 or class four property under 42-12004, this paragraph does not apply if the contract amount is more than twenty-five percent of the most recent full cash value established under chapter 13, article 2 of this title as of the date of any bid for the work or the date of the contract, whichever value is higher.

(b) For all existing property other than existing property described in subdivision (a) of this paragraph, this paragraph does not apply if any of the following is true:

(i) The contract amount is more than seven hundred fifty thousand dollars.

(ii) The scope of work directly relates to more than forty percent of the existing square footage of the existing property.

(iii) The scope of work involves expanding the square footage of more than ten percent of the existing property.

(c) Project elements may not be artificially separated from a contract to cause a project to qualify as an alteration. The department has the burden of proof that project elements have been artificially separated from a contract.

(d) If a project for which the owner and the person performing the work reasonably believed, at the inception of the contract, would be treated as an alteration under this paragraph and, on completion of the project, the project exceeded the applicable

threshold described in either subdivision (a) or (b) of this paragraph by no more than twenty-five percent of the applicable threshold for any reason, the work performed under the contract qualifies as an alteration.

(e) A change order that directly relates to the scope of work of the original contract shall be treated as part of the original contract, and the contract amount shall include any amount attributable to a change order that directly relates to the scope of work of the original contract.

(f) Alteration does not include maintenance, repair or replacement.

2. "Contracting" means engaging in business as a contractor.

3. "Contractor" is synonymous with the term "builder" and means any person or organization that undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does personally or by or through others, modify any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part of such a project, including the erection of scaffolding or other structure or works in connection with such a project, and includes subcontractors and specialty contractors. For all purposes of taxation or deduction, this definition shall govern without regard to whether or not such contractor is acting in fulfillment of a contract.

4. "Manufactured building" means a manufactured home, mobile home or factory-built building, as defined in section 41-2142.

5. "Manufactured building dealer" means a dealer who either:

(a) Is licensed pursuant to title 41, chapter 16 and who sells manufactured buildings to the final consumer.

(b) Supervises, performs or coordinates the excavation and completion of site improvements or the setup or moving of a manufactured building including the contracting, if any, with any subcontractor or specialty contractor for the completion of the contract.

6. "Modification" means construction, grading and leveling ground, wreckage or demolition. Modification does not include:

(a) Any project described in subsection O of this section.

(b) Any wreckage or demolition of existing property, or any other activity that is a necessary component of a project described in subsection O of this section.

(c) Any mobilization or demobilization related to a project described in subsection O of this section, such as the erection or removal of temporary facilities to be used by those persons working on the project.

7. "Modify" means to make a modification or cause a modification to be made.

8. "Owner" means the person that holds title to the real property or improvements to real property that is the subject of the work, as well as an agent of the title holder and any person with the authority to perform or authorize work on the real property or improvements, including a tenant and a property manager. For the purposes of subsection O of this section, a person who is hired by a general contractor that is hired by an owner, or a subcontractor of a general contractor that is hired by an owner, is considered to be hired by the owner.

9. "Prime contracting" means engaging in business as a prime contractor.

10. "Prime contractor" means a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract. Except as provided in subsections E and Q of this section, a person who owns real property, who engages one or more contractors to modify that real property and who does not itself modify that real property is not a prime contractor within the meaning of this paragraph regardless of the existence of a contract for sale or the subsequent sale of that real property.

11. "Replacement" means the removal from service of one component or system of existing property or tangible personal property installed in existing property, including machinery or equipment, and the installation of a new component or system or new tangible personal property, including machinery or equipment, that provides the same similar or upgraded design or functionality, regardless of the contract amount and regardless of whether the existing component or system or existing tangible personal property is physically removed from the existing property.

12. "Sale of a used manufactured building" does not include a lease of a used manufactured building.

#### **42-5101. Definitions**

In this article, unless the context otherwise requires:

1. "Eligible grocery business" means an establishment that is deemed eligible to participate in the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a) by the United States department of agriculture food and nutrition service or an establishment that proves to the satisfaction of the department of revenue that, based on the nature of the establishment's food sales, could be eligible to participate in the supplemental nutrition assistance program established by the food and nutrition act of 2008.

2. "Facilities for the consumption of food" means tables, chairs, benches, booths, stools, counters and similar conveniences, trays, glasses, dishes or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.

3. "Food" means any food item intended for human consumption that is intended for home consumption as defined by rules adopted by the department pursuant to section 42-5106.

4. "Food for consumption on the premises" includes:

(a) Hot prepared food.

(b) Hot or cold sandwiches.

(c) Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and similar conveniences and within parking areas for the convenience of in-car consumption of food.

(d) Food served with trays, glasses, dishes or other tableware.

(e) Beverages sold in cups, glasses, or open containers.

(f) Food sold by caterers.

(g) Food sold within the premises of theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches and any business that charges admission, entrance or cover fees for exhibition, amusement or entertainment.

(h) Any items contained in subdivisions (a) through (g) of this paragraph even though they are sold on a take-out or to go basis, and whether or not the item is packaged, is wrapped or is actually taken from the premises.

5. "Hot prepared food" includes those products, items or ingredients of food that are prepared and intended for sale in a heated condition. Hot prepared food includes a combination of hot and cold food items or ingredients if a single price has been established.

6. "Premises" means the total space and facilities in or on which a retailer conducts business and that are owned or controlled, in whole or in part, by a retailer or are made available for the use of customers of the retailer or group of retailers, including any building or part of a building, parking lot or grounds.

#### **42-5102. Tax exemption for sales of food; nonexempt sales**

A. Except for the gross proceeds of sales or gross income from the sale of food for consumption on the premises, the taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by any of the following:

1. A retailer who conducts an eligible grocery business.
2. A retailer who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged and sold in a similar manner as an eligible grocery business.
3. A retailer who sells food and does not provide or make available any facilities for the consumption of food on the premises.
4. A retailer who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers which are used to record taxable and tax exempt sales or a retailer who conducts a delicatessen business and who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.
5. A retailer who is a street or sidewalk vendor and who uses a pushcart, mobile facility, motor vehicle or other such conveyance.
6. Vending machines and other types of automatic retailers.

B. The taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by a state university or community college or its designee on its campuses to students using a validated meal ticket or to patients purchasing or consuming food at the Arizona health sciences center.

C. The taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by a retailer to:

1. A regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to section 15-802.
2. A child care facility that is licensed under section 36-882 or a child care group home certified under section 36-897.01.
3. A facility which provides on a regular basis care and supervision of persons who, because of age or a mental or physical condition, are incapable of caring for themselves and where they are unaccompanied by their custodians or guardians for periods of less than twenty-four hours a day.
4. An organization which is tax exempt under section 501(c)(3) of the internal revenue code and which provides the articles to persons with a nominal charge or without a monetary charge.
5. A prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff for consumption on the premises.

D. Notwithstanding subsection A of this section, the taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of low or reduced cost articles of food or drink to eligible elderly, disabled or homeless persons by a business subject to tax under section 42-5074 that contracts with the department of economic security and that is approved by the food and nutrition service of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases are made with the benefits issued pursuant to the supplemental nutrition assistance program.

#### **42-5104. Records of sales**

A. Retailers shall maintain accurate, verifiable and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this chapter. A retailer may use any method of recording that properly reflects all purchases and sales of food items exempted from taxes imposed by this chapter, as well as all purchases and sales of items subject to taxes imposed by this chapter, provided such records are maintained in accordance with rules adopted by the department.

B. Any retailer who fails to maintain records as provided in this section shall pay the amount of taxes that would have been imposed on tangible personal property by this chapter if sales of food had not been exempted by article 2 of this chapter and this article.

C. If, upon request by the department, the retailer cannot demonstrate to the department that such records properly reflect all sales of food items exempted from taxes imposed by this chapter, the department may recompute the amount of tax to be paid pursuant to section 42-1108.

#### **42-5106. Rules**

A. The department shall adopt rules defining food consistent with section 42-5101 and this section.

B. The department shall include as food:

1. Returnable containers for which a deposit is collected.
2. Ice and dry ice used in packing, shipping or transporting food.
3. Seeds and plants to grow food for personal consumption.

C. The department shall not include food for consumption on the premises, alcoholic beverages, tobacco, medicines or dietary supplements, such as vitamins and protein supplements, as food, unless the item is otherwise deemed to be food under this section.

D. Notwithstanding section 42-5101, any ready-to-drink, nonalcoholic beverage that is contained in a closed or sealed bottle, can or carton, that is intended for human consumption and that is intended for home consumption is deemed to be food.

E. The department shall adopt rules that, other than for those items specifically included or excluded by subsections B, C and D of this section, define food to be those items that are intended for human consumption and that are intended for home consumption. In adopting these rules, the department shall give strong consideration to those specific items that are then eligible for purchase with supplemental nutrition assistance program benefits so as to effectuate the intent of the legislature as specified in this article.

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION**

Authority: A.R.S. § 42-1004

*The provisions in these rules became effective August 1, 1976, unless otherwise noted in the Historical Note following the rule.*

**ARTICLE 6. PRIME CONTRACTING CLASSIFICATION**

Section

R15-5-601. Taxpayer Bonds for Contractors

**ARTICLE 9. MINING CLASSIFICATION**

Section

R15-5-901. Definitions  
R15-5-902. General  
R15-5-904. Manufacturing or Processing Service Charges  
R15-5-905. Products Shipped Out of Arizona  
R15-5-908. Actual Freight Paid

**ARTICLE 10. TRANSACTION PRIVILEGE TAX -- TRANSIENT LODGING CLASSIFICATION**

Section

R15-5-1001. Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification  
R15-5-1002. Activities in Addition to Providing Lodging  
R15-5-1003. Providing Lodging to Government Agencies

**ARTICLE 11. TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION**

Section

R15-5-1101. Definitions  
R15-5-1102. Printer's Sale of Printing  
R15-5-1106. Sale of Materials to a Printer  
R15-5-1111. Miscellaneous Costs of a Printer Are Not Deductions  
R15-5-1112. Sale of Image Developing

**ARTICLE 13. SALES TAX -- PUBLISHING CLASSIFICATION**

Section

R15-5-1302. General  
R15-5-1303. Definitions  
R15-5-1304. Printing costs  
R15-5-1305. Out-of-state distribution

**ARTICLE 14. TRANSPORTING CLASSIFICATION**

Section

R15-5-1404. Excess Baggage Charges  
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**ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION**

Section

R15-5-1502. General  
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R15-5-1507. Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations  
R15-5-1512. Lease -- Purchase Agreements

**ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION**

Section

R15-5-1601. Definitions  
R15-5-1602. Casual Leasing Activity  
R15-5-1604. Gross Income  
R15-5-1605. Rental to Government Agencies  
R15-5-1606. Nonprofit Organizations  
R15-5-1608. Commercial property -- storage facilities  
R15-5-1609. Commercial property -- licensee agreements

**Title 15, Ch. 5 Arizona**

**Code**

Department of Revenue – Transaction Privilege and Use Tax Section  
**ARTICLE 17. RESTAURANT CLASSIFICATION**

Section

- R15-5-1704. Providing Food or Drink to Government Agencies
- R15-5-1705. Amusement Devices
- R15-5-1706. Cover Charges
- R15-5-1708. Gratuities (Tips)
- R15-5-1709. Coupon Redemption

**ARTICLE 18.1. SALES OF FOOD**

Section

- R15-5-1860. Definitions
- R15-5-1862. Restaurant food sales

**ARTICLE 20. GENERAL**

Section

- R15-5-2001. Definitions
- R15-5-2002. Liability for Transaction Privilege Tax
- R15-5-2003. Applicability of Provisions to Marketplace Facilitators and Remote Sellers
- R15-5-2004. Multi-location and Multi-business Taxpayers
- R15-5-2007. Credit for Accounting and Reporting Expenses
- R15-5-2009. Transactions Between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers.
- R15-5-2010. Transactions Between Affiliated Persons
- R15-5-2011. Bad Debts

**ARTICLE 21. UTILITIES CLASSIFICATION**

Section

- R15-5-2104. Interstate and Foreign Sales
- R15-5-2105. Locally Delivered Utilities
- R15-5-2106. Compressed and Bottled Liquids
- R15-5-2107. Sales to Irrigation Districts
- R15-5-2110. Security Deposits

**ARTICLE 6. PRIME CONTRACTING CLASSIFICATION**

**R15-5-601. Taxpayer Bonds for Contractors**

- A. For the purpose of this rule:
  - 1. The principal place of business shall be Arizona if the licensee has continuously operated a facility with at least one full-time employee in Arizona for 12 consecutive months preceding the determination.
  - 2. A surety bond shall include a bond issued by a company authorized to execute and write bonds in Arizona as a surety or composed of securities or cash which are deposited with the Department of Revenue.
- B. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:
  - 1. Two thousand dollars for:
    - a. General contractors of residential buildings other than single family;
    - b. Operative builders;
    - c. Plumbing, air conditioning, and heating, except electric;
    - d. Painting, paper hanging;
    - e. Decorating;
    - f. Electrical work;
    - g. Masonry stonework and other stonework;
    - h. Plastering, drywall, acoustical and insulation work;
    - i. Terrazzo, tile, marble and mosaic work;
    - j. Carpentry;
    - k. Floor laying and other floor work;
    - l. Roofing and sheet metal work;
    - m. Concrete work;
    - n. Water well drilling;
    - o. Structural steel erection;
    - p. Glass and glazing work;
    - q. Excavating and foundation work;
    - r. Wrecking and demolition work;
    - s. Installation and erection of building equipment;
    - t. Special trade contractors; and

- u. Manufacturers of mobile homes.
- 2. Seven thousand dollars for:
  - a. General contractors of single family housing;
  - b. Water, sewer, pipeline, communication and power- line construction.
- 3. Seventeen thousand dollars for:
  - a. General contractors of industrial buildings and warehouses;
  - b. General contractors nonresidential buildings other than single family;
  - c. Highways and street construction except elevated highways.
- 4. Twenty-two thousand dollars for heavy construction.
  - a. Heavy construction;
  - b. Bridge construction;
  - c. Tunnel construction; and
  - d. Elevated highway construction
- C. Except as provided in subsection (D) of this rule, any applicant whose principal place of business is outside Arizona or who has conducted business in Arizona for less than one year shall post a bond before the transaction privilege tax license shall be issued.
- D. Any taxpayer subject to bonding requirements may submit a written request to the Director of the Department of Revenue for an exemption from the bond. The exemption request shall provide at least one of the following:
  - 1. Any taxpayer who has been actively engaged in business for at least two years immediately preceding the exemption request may submit statements from an authorized state employee from each state in which the business has been licensed in the last two years verifying that the taxpayer has, for at least two years immediately preceding the date of the statement, made timely payment of all sales taxes and other transaction privilege taxes incurred.
  - 2. Two-year reporting history as described above in subsection (D)(1) and an explanation of good cause for late or insufficient payment of the tax;
  - 3. Documentation which verifies that no potential for Arizona tax liability exists;
  - 4. Bond for a previously issued Arizona transaction privilege license that adequately covers the licensee's expected transaction privilege tax liability for Arizona for both the previously issued license and for this license.
- E. The bond shall not expire prior to two years after the transaction privilege license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Department another bond within five business days of the licensee's receipt of written notification by the Department.
- F. Any licensee, who has had a bond posted for at least two years and fulfills any exception listed in subsection (D), or whose principal place of business becomes Arizona, may request a written waiver and that the bond be returned.

**Historical Note**

Former Section R15-5-601 repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-601 renumbered from R15-10-202 (Supp. 94-1). Amended by final rulemaking at 24 A.A.R. 742, effective May 13, 2018 (Supp. 18-1).

**ARTICLE 9. MINING CLASSIFICATION****R15-5-901. Definitions**

In addition to the definitions provided in A.R.S. § 42-5001, the following definitions apply to this Article:

1. "Mining" means operations involving the extraction of nonmetalliferous mineral products from beneath or at the surface of the earth for commercial use and includes underground, surface, and open-pit operations.
2. "Nonmetalliferous mineral product" has the same meaning as prescribed in A.R.S. § 42-5072.

**Historical Note**

Amended effective November 7, 1978 (Supp. 78-6). Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-901 renumbered from R15-5-903 and amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

**R15-5-902. General**

- A. A person engaged in the business of mining is subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a purchaser that resells the product in the ordinary course of business.
- B. A person engaged in the business of mining is not subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a person engaged in business classified under the prime contracting classification if the nonmetalliferous mineral product is to be incorporated into a structure or project as part of the business.
- C. A person engaged in the business of mining is subject to tax under the retail classification on the gross income received from the sale of a nonmetalliferous mineral product to a final consumer.
- D. A person engaged in the business of mining shall not deduct from the tax base amounts paid as royalties.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

**R15-5-904. Manufacturing or Processing Service Charges**

- A. A person engaged in the business of mining is subject to tax on the gross proceeds of sales or gross income from refining petroleum products, producing a combination of nonmetalliferous mineral products, as well as other manufacturing or processing service charges derived from contracts with the owner of the products.

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- B. A person who mines and processes nonmetalliferous mineral products is subject to tax on the gross proceeds of sales or gross income from the sale of the first marketable product. For example, a person who mines clay and processes the material into bricks is taxable on the gross proceeds of sales or gross income from the sale of the bricks.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

**R15-5-905. Products Shipped Out of Arizona**

- A. A person engaged in the business of mining that ships a nonmetalliferous mineral product out-of-state without making a sale in Arizona shall include in the tax base the market value of the nonmetalliferous mineral product before it enters interstate commerce.
- B. Unless otherwise provided in subsection (D), the taxpayer shall calculate the market value of a nonmetalliferous mineral product shipped out-of-state in the following manner:
  - 1. Establish the total selling price of the product outside Arizona.
  - 2. Deduct, from the total selling price, costs incurred out-of-state that increase the value of the product. These costs include:
    - a. The cost of actual freight paid, as provided in R15-5-908, to the point of sale outside Arizona;
    - b. The refining or processing cost incurred before the first sale; and
    - c. The cost of sales commissions, paid or accrued, in connection with the sale.
- C. The market value of the product shipped out-of-state shall not include the cost of processing if the processor has paid the Arizona transaction privilege tax on the gross proceeds of sales or gross income derived from the processing. (See R15-5-904.)
- D. A taxpayer may compute the market value of a nonmetalliferous mineral product shipped out-of-state in any manner that accurately reflects the value of the nonmetalliferous mineral product at the point it enters interstate commerce if the taxpayer gives prior written notification to the Department and the Department approves the computation method.

**Historical Note**

Amended effective March 18, 1981 (Supp. 81-2). Amended effective June 18, 1987 (Supp. 87-2). Amended by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

**R15-5-908. Actual Freight Paid**

- A. A person engaged in the business of mining may deduct from the tax base under the mining classification actual freight costs incurred in connection with the sale that are included in the sales price if the actual freight costs incurred are separately stated in the billing to its customer.
- B. A person engaged in the business of mining that does not separately state the actual freight costs incurred in the billing to the customer may still deduct the actual freight costs paid to a third party, provided the person keeps books and records to show separately the actual freight paid to the third party.
- C. A taxpayer shall not deduct the cost incurred by the taxpayer before a sale for freight from the mining or production location to the sales location.

**Historical Note**

Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2952, effective July 18, 2000 (Supp. 00-3).

**ARTICLE 10. TRANSACTION PRIVILEGE TAX -- TRANSIENT LODGING CLASSIFICATION**

**R15-5-1001. Application of the Definition of Transient for Purposes of Taxation under the Transient Lodging Classification**

- A. Effective January 1, 1979, the leasing or renting of dwelling units and lodging facilities to a person shall not be taxable under the transient lodging classification if the lodging is obtained for a continuous block of time for 30 or more consecutive days except as provided under A.R.S. § 42-1310.10(B). For purposes of this rule, “person” has the same meaning as under A.R.S. § 42-1301.
- B. Gross receipts from providing lodging obtained for a continuous block of time for 30 or more consecutive days shall not be taxable under the transient lodging classification from the first day of occupancy.
  - 1. Lodging obtained for 30 or more consecutive days in increments of time for a period of less than 30 consecutive days rather than for a continuous block of time shall be taxable under the transient lodging classification except as provided under A.R.S. § 42-1310.10(B).
  - 2. A lodger may originally acquire lodging on an incremental basis for a period of less than 30 consecutive days and subsequently change to a continuous block of time for 30 or more consecutive days; however, the lodging originally obtained on an incremental basis of less than 30 consecutive days shall remain subject to tax regardless of any subsequent action on the part of the lodger.
- C. If lodging is obtained on a continuous basis for 30 or more consecutive days but the person obtaining the lodging leaves before the 30-day period ends and only pays for a period of 29 days or less, the exclusion shall not apply. The gross receipts from providing lodging for 29 days or less shall be subject to tax under the transient lodging classification.
- D. The following situations are indicative of the application of the provisions in this rule:
  - 1. A person rents a motel room on a weekly basis for 10 consecutive weeks. The total rental period is greater than 30 consecutive days; however, the method of renting by the week meets the definition of “transient.” Gross receipts from renting lodging space on such a basis are subject to tax under the transient lodging classification.
  - 2. A motion picture company contracts with a hotel to rent a block of 15 rooms for a three-month period during which filming will occur in the area. During that three-month period, a variety of crew members and actors will occupy the rooms. Any one room may have a different occupant during the three-month time period as filming progresses and different actors or crew members are involved in the production of the film. The rental by the motion picture company for the three-month period is not subject to tax

under the transient lodging classification since the motion picture company contracted with the hotel to rent for a three-month period and, therefore, does not meet the definition of a transient.

3. An individual reserves a room in a rooming house for two weeks. The individual decides to stay another two weeks. The total number of days' stay is now at 28 days. Once again, the individual extends the stay by two weeks. Each time period is less than 30 days. Even though the total period of time is over 29 days, after the third extension of two weeks, the individual continues to be a transient for purposes of taxation under the transient lodging classification. If the individual had rented the room for 30 days or more after the first two weeks, gross receipts from the additional time would not be subject to tax. However, the first two-week block of time would remain taxable since that time period falls under the definition of transient.
4. An individual is not sure how long he will be staying at a hotel so, upon registration, gets the room for 35 days. After 21 days the individual decides to leave and pays only for the 21-day stay. Gross receipts are subject to tax under the transient lodging classification. If the individual had a contractual agreement in which, regardless of length of occupancy, he was required to pay for the entire 35 days, the gross receipts from such a transaction would not be taxable.

#### Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-1001 renumbered from R15-5-1614 (Supp. 94-2). Amended effective April 21, 1995 (Supp. 95-2).

#### R15-5-1002. Activities in Addition to Providing Lodging

- A. If a transient lodging facility is engaged in the business of providing lodging and engages in the business of providing meals, the gross receipts from lodging shall be separately stated and reported from the gross receipts from restaurant activities.
- B. Gross receipts from the providing of meals or room service shall be subject to tax under the restaurant classification.
- C. Gross receipts from the sale of tangible personal property by transient lodging facilities such as from magazine stands, gift shops, or in-room food or beverage bars shall be subject to tax under the retail classification.

#### Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-1002 renumbered from R15-5-1615 (Supp. 94-2). Amended effective April 21, 1995 (Supp. 95-2).

#### R15-5-1003. Providing Lodging to Government Agencies

Gross receipts from providing transient lodging to the United States Government, the state or its political subdivisions, or any other government agency or its employees shall be taxable under the transient lodging classification unless otherwise exempt.

#### Historical Note

Adopted effective April 21, 1995 (Supp. 95-2).

### ARTICLE 11. TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

#### R15-5-1101. Definitions

For purposes of this Article, the following definitions apply:

1. "Image developing" means the copying or reproducing by a printer of an image by any means from film, paper, video, or another data storage medium to photographic print paper or another storage medium that can visually display the image.
2. "Job printing" means the copying or reproducing by a printer of documents or data directly or indirectly provided by the printer's customer, including by another person at the customer's direction, for the ultimate purpose of producing a physical or electronic copy of the document or data. The document or data can be textual or pictorial, and may be received by the printer in physical or electronic form. Examples of methods of job printing include dye sublimation, electrostatic printing, flexography, gravure, inkjet printing, laser printing, lithography, offset printing, optical scanning, photocopying, photofinishing, reprographic printing, screen printing, thermography, xerography, and similar means of duplication.
3. "Photography" means the process of taking and supplying images to customers, using film, video, or another data storage medium.
4. "Printer" means a person that copies or reproduces textual or pictorial material by any means, process, or method of job printing, engraving, embossing, or copying, but that does not distribute the copied or reproduced material on the person's own behalf.
5. "Printing" means a finished product in physical or electronic form produced by a printer through job printing, engraving, embossing, or copying and that is held for sale by the printer.
6. "Qualifying health care organization" has the same meaning as prescribed in A.R.S. § 42-5001(10).
7. "Qualifying hospital" has the same meaning as prescribed in A.R.S. § 42-5001(11).

#### Historical Note

Repealed effective August 13, 1987 (Supp. 87-3). New Section made by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

#### R15-5-1102. Printer's Sale of Printing

- A. Except as otherwise provided in subsection (F) or other applicable A.R.S. § 42-5066(B) exemptions, gross income or gross proceeds derived from all of a printer's costs or expenses of filling a customer's printing order are subject to tax under this Article. Examples of costs or expenses include charges for set-up, die cutting, embossing, folding, and binding operations.
- B. Gross income or gross proceeds derived from an Arizona printer's sale of printing within Arizona are subject to tax even when the printer conducts the job printing, engraving, embossing, or copying activity outside the state, unless the printing is shipped or delivered outside the state for use outside the state.

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- C. If a printer ships or delivers printing to be used outside the state to a common carrier for transportation to a location outside the state, the common carrier is deemed to be the agent of the printer for purposes of determining whether the printing has been shipped or delivered outside the state, regardless of who is responsible for payment of the freight charges.
- D. A printer may substantiate a shipment or delivery of printing outside the state by one of the following records:
  - 1. An internal delivery order that is supported by receipts for expenses incurred in delivery of printing and signed on the delivery date by the person who delivers the printing;
  - 2. A common carrier's receipt or bill of lading;
  - 3. A parcel post receipt;
  - 4. An export declaration;
  - 5. A receipt from a licensed broker; or
  - 6. Proof of export or import, signed by a customs officer.
- E. Except as provided in subsection (F) or other applicable A.R.S. § 42-5066(B) exemptions, gross income or gross proceeds derived from an Arizona printer's charges for the distribution of printing are generally subject to tax under this Article. In the absence of documentation listed in subsection (D), it remains the taxpayer's burden to substantiate that the gross income or gross proceeds derived from a sale of printing are not taxable because the printing is shipped or delivered outside the state for use outside the state, pursuant to A.R.S. § 42-5066(B)(2). A printer substantiates that printing is shipped or delivered outside the state for use outside the state if the printer shows that the address or number to which the printer distributes the printing does not identify or is incapable of identifying an in-state location.
- F. Pursuant to A.R.S. § 42-5066(B)(4), a printer may deduct its gross income or gross proceeds derived from charges for postage and freight if the printer separately states the charges on a customer's invoice and in the printer's records, except that the amount deducted shall not exceed the amount paid by the printer to the United States Postal Service or a commercial delivery service. A printer may not deduct its gross income or gross proceeds derived from charges for delivery of the printing using the printer's own conveyance.

**Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2). New Section made by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 470, effective February 6, 2007 (Supp. 07-1).

**R15-5-1106. Sale of Materials to a Printer**

Sales to a printer of materials that do not become an ingredient or component part of a printing fall under the retail classification (see Article 1 of this Chapter) and are subject to tax unless otherwise exempt under A.R.S. § 42-5061. Examples of such materials include color process plates, electrotypes, film processing chemicals, printing plates, and wood mounts. In contrast, sales by the printer of any such materials that are job printed, engraved, embossed, or copied by the printer for the printer's customer constitute sales of printing and fall under this Article. An example is a printer's sale to a customer of a printing plate upon which the printer has performed job printing, engraving, embossing, or copying activity for the customer.

**Historical Note**

Amended by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

**R15-5-1111. Miscellaneous Costs of a Printer Are Not Deductions**

- A. A printer shall not deduct the cost of subletting job printing, engraving, embossing, or copying activities.
- B. A printer shall not deduct the cost of labor or materials employed in the job printing, engraving, embossing, or copying activity of another person.

**Historical Note**

Amended by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

**R15-5-1112. Sale of Image Developing**

- A. Gross income or gross proceeds derived from a sale of image developing in which the image developing is not part of a sale of photography are subject to tax under this Article.
- B. Gross income or gross proceeds derived from a sale of image developing to a business that resells the image developing are nontaxable under this Article.
- C. Gross income or gross proceeds derived from a sale of image developing either to a qualifying health care organization that uses the image developing solely to provide health and medical related educational and charitable services or to a qualifying hospital are nontaxable under this Article. An example is image developing of x-ray film or photographs.

**Historical Note**

Section repealed; new Section made by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

**ARTICLE 13. SALES TAX -- PUBLISHING CLASSIFICATION**

**R15-5-1302. General**

- A. The gross income derived from the business of publishing within the state is taxable under this classification. Gross income includes revenue from subscriptions, notices, and local advertising.
- B. Subscription income includes all circulation revenue. In determining the taxable base, however, there shall be excluded from such revenue those actual amounts retained by or credited to carriers and other vendors as compensation for delivery or sale of newspapers.

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1. Carriers are defined as those persons who deliver newspapers to individual subscribers. Such deliveries are confined to a specific area or route.
  2. Other vendors are defined as those persons who deliver newspapers to retailers such as news stands, convenience markets, drug stores and to coin-operated vending machines located in or near commercial establishments such as office buildings, hotels, motels, grocery and department stores.
- C. Income of publishers from sales of newspapers, whether directly or through other vendors, to news stands, convenience markets, drug stores or other retailers are taxable under this classification. The sales of newspapers by such retailers to consumers are taxable as retail sales. (See R15-5-1802(C))

**Historical Note**

Amended effective March 18, 1981 (Supp. 81-2).

**R15-5-1303. Definitions**

- A. A “publisher” is one who manufactures and distributes a publication from a point within this state.
- B. The term “publication” includes books, newspapers, magazines, music, periodicals, and any other literary work.
- C. Effective 9/12/75, the term “publication” shall specifically exclude books. Sales of books directly to a final consumer, however, are taxable under the retail classification (see Article 18).

**R15-5-1304. Printing costs**

The cost of printing a publication, including the subletting of printing to another person, is not deductible from the gross income.

**R15-5-1305. Out-of-state distribution**

Income from publications, other than books, mailed or distributed from a point within this state to a point outside the state is subject to the tax under this classification.

**ARTICLE 14. TRANSPORTING CLASSIFICATION****R15-5-1404. Excess Baggage Charges**

- A. Gross proceeds of sales or gross income from charges for excess baggage shipped from one point to another point in this state is included in the tax base under the transporting classification except as provided in subsection (B).
- B. Gross proceeds of sales or gross income from charges for excess baggage shipped by motor vehicle from one point to another point in this state is not included in the tax base under the transporting classification if a light motor vehicle fee imposed under A.R.S. § 28-5492 or a motor carrier fee imposed under A.R.S. § 28-5852 is paid to the Department of Transportation on the vehicle used in the transporting.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 2594, effective June 12, 2000 (Supp. 00-2).

**R15-5-1405. Demurrage Charges**

Gross proceeds of sales or gross income from demurrage charges is included in the tax base under the transporting classification unless the transporting to which it relates is excluded from the transporting classification.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 2594, effective June 12, 2000 (Supp. 00-2).

**R15-5-1408. Rental of Aircraft**

- A. Gross proceeds of sales or gross income from transporting by aircraft freight or property from one point to another point in this state is included in the tax base under the transporting classification.
- B. A charge for the use of an aircraft when a pilot is not provided is rent. Gross proceeds of sales or gross income from the rental or leasing of aircraft is included in the tax base under the personal property rental classification unless a specific deduction or exclusion applies.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 2594, effective June 12, 2000 (Supp. 00-2).

**ARTICLE 15. PERSONAL PROPERTY RENTAL CLASSIFICATION****R15-5-1502. General**

- A. Gross income derived from the rental of tangible personal property is included in the tax base under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies. Examples of tangible personal property include: televisions, cars, trucks, lawnmowers, floor polishers, tuxedos, uniforms, furniture, towels, and linens.
- B. In this Article, the terms “lease,” “rental,” and “leasing” are used synonymously.
- C. Gross income from the lease of tangible personal property to a lessee who subleases the property is not taxable under the personal property rental classification if the lessee is engaged in the business of leasing the property under the personal property rental classification.

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- D.** Gross income from the rental of tangible personal property includes charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property taxes, and penalty fees even if these charges are billed as separate items, unless a specific statutory exemption, exclusion, or deduction applies.

**Historical Note**

Amended subsection (D) and added subsection (E) effective March 18, 1981 (Supp. 81-2). Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

**R15-5-1503. Sourcing of Leased Tangible Personal Property**

**A.** In this Section:

1. “Business location” means the business address that appears on a lessor’s privilege license, but if the lessor does not have a business address in Arizona, business location means the lessee’s residential or primary business street address.
2. “Source” means to determine the location of leasing or renting activity for tax purposes.

- B.** The personal property rental classification applies to a person who is engaging or continuing in the business of leasing or renting tangible personal property in Arizona for a consideration. Gross receipts from leasing or renting tangible personal property in Arizona are taxable under this classification.
- C.** The Department shall source gross receipts from leasing or renting tangible personal property to the business location. Thus, gross receipts of a lessor without a business address in Arizona, derived from leasing or renting tangible personal property, are sourced to the lessee’s residential or primary business street address and are taxable when the property is shipped, delivered, or otherwise brought into the state for use in Arizona.
- D.** Gross receipts from leasing or renting tangible personal property are not taxable if the property is shipped or delivered outside of the state and intended, at the inception of the lease, for use exclusively outside of the state.
- E.** Gross receipts from leasing or renting tangible personal property are not taxable if the property is removed from the state and used exclusively outside of the state. Intermittent use of tangible personal property outside of the state does not constitute removal of the property from the state for use exclusively outside of the state, and therefore does not change the business location of the property or liability for the tax. For example, use of a business’s leased tangible personal property by its employees at different locations on business trips and service calls does not change liability for the tax.
- F.** The burden of proof for establishing the applicability of subsection (D) or (E) is on the lessor.
- G.** For leasing or renting activity related to a motor vehicle, the Department shall examine whether the motor vehicle is licensed, registered, or primarily used in Arizona.
- H.** A taxpayer shall not take a deduction or credit for taxes paid in another state on a lease or rental of tangible personal property.

**Historical Note**

Amended by final rulemaking at 10 A.A.R. 3071, effective September 11, 2004 (Supp. 04-3).

**R15-5-1506. Rental of Tangible Personal Property to Government Agencies**

A lessor’s gross income from the rental of tangible personal property to the United States Government, the state of Arizona, or other governmental subdivisions is taxable under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

**R15-5-1507. Rental of Tangible Personal Property to Schools, Churches, and Other Nonprofit Organizations**

A lessor’s gross income from the rental of tangible personal property to a school, church, or other nonprofit organization is taxable under the personal property rental classification unless a specific statutory exemption, exclusion, or deduction applies.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

**R15-5-1512. Lease -- Purchase Agreements**

- A.** A lessor’s gross income from the leasing of tangible personal property that includes an option to purchase the tangible personal property is taxable under the personal property rental classification until the lessee exercises the purchase option.
- B.** Gross income received after the lessee exercises the purchase option is taxable under the retail classification.

**Historical Note**

Amended by final rulemaking at 6 A.A.R. 3091, effective July 18, 2000 (Supp. 00-3).

**ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION**

**R15-5-1601. Definitions**

The following definitions apply for purposes of the rules in this Article, unless the context requires otherwise or unless otherwise defined.

1. “Agricultural property” means land or structures which are used for the purposes of growing crops or raising animals including agronomy, horticulture, viticulture, or animal husbandry.
2. “Economic unit of agricultural property” means agricultural property which is rented to the same lessee under one lease or rental agreement but may include more than one parcel or location which is functionally integrated.

3. “Real property used for commercial purposes” means land or structures, including parking lots but not including agricultural property or land or structures used for residential purposes.
4. “Rental” means renting or leasing
5. “Unit” means a single real property location rented or leased to a single tenant under one lease or rental agreement.

**Historical Note**

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-1601 renumbered from R15-5-1603 and amended effective April 21, 1995 (Supp. 95-2).

**R15-5-1602. Casual Leasing Activity**

- A. For purposes of taxation under the commercial lease classification, there shall be no general exclusion for a casual rental of real property unless delineated under A.R.S. § 42-5059 except as provided in subsection (B) of this rule.
- B. For periods ending on or before July 31, 1988, the rental of one unit or real property shall have been deemed to be a casual activity and not subject to transaction privilege tax if:
  1. A lessor had income from another source which was unrelated to the income from the rental of real property and such income was of a significant amount so as to indicate that the rental activity was not the sole or main support of the lessor and
  2. The scope and degree of the rental activity clearly indicated that the rental activity was an investment activity rather than income from a business.
- C. For periods beginning on or after August 1, 1988, gross income from the rental of one or more units of real property used for commercial purposes shall be deemed to be a business activity and shall be taxable under the commercial lease classification.
- D. For periods prior to July 17, 1993, gross income from the rental of one economic unit of agricultural property shall not be taxable if the following conditions exist:
  1. A lessor had income from another source which was unrelated to the income from the rental of one economic unit of agricultural property and such income was of a significant amount so as to indicate that the rental activity was not the sole or main support of the lessor and
  2. The scope and degree of the rental activity clearly indicated that the rental activity was an investment activity rather than income from a business.
- E. For periods from and after July 17, 1993, gross income from the rental of agricultural property shall not be subject to tax if the conditions of A.R.S. § 42-5069(C)(12) are met.
- F. The following situations are indicative of the application of the general provisions of the commercial lease classification:
  1. A three-story office building is lease in its entirety to a large law firm. The building is one unit of property. Prior to August 1, 1988, the lessor of the office building was not considered to be engaged in business under the commercial lease classification if the conditions of subsection (A) existed. Commencing on or after August 1, 1988, the single rental of commercial real property is subject to tax under the commercial lease classification.
  2. Individual spaces in a small medical building are rented to three different members of the medical profession on separate leases. The property consists of three units. Regardless of the time period in which the rental occurred, the lessor in this situation has always been engaged in business under the commercial lease classification.
  3. A partnership is formed to hold one unit of real property for purposes of leasing. Income received from this activity is taxable since the partnership was formed for business purposes.
  4. Two hundred acres of farmland are leased to one tenant. The acreage is one economic unit of agricultural property. The lessor is employed as an engineer and leases the property as an investment. Regardless of the time period in which the lease occurred, the lessor of the property is not engaged in business under the commercial lease classification.
  5. Two hundred acres of agricultural property are leased to five unrelated parties on separate leases. The property consists of five economic units of agricultural property. Regardless of the time period in which the leases occurred, the lessor is engaged in business under the commercial lease classification. Five separate lease agreements are not a casual activity and the lessor does not fall within any of the current exemptions under A.R.S. § 42-5069(C)(12).

**Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-1602 renumbered from R15-5-1607 and amended effective April 21, 1995 (Supp. 95-2). R15-5-1602(A), (E) and (F)(5) corrected to reflect updated citation references to Arizona Revised Statutes (Supp. 06-4).

**R15-5-1604. Gross Income**

- A. Gross income under the commercial lease classification shall include all amounts paid to or on behalf of the lessor including but not limited to the following items:
  1. Rent;
  2. Property tax paid by the lessee either as reimbursement to the lessor or paid directly to the county assessor on the lessor's behalf;
  3. Insurance paid by the lessee either as reimbursement to the lessor or directly on the lessor's behalf;
  4. Common area maintenance charges paid by the lessee;
  5. Payments by the lessee for the promotion of the facility or of the lessee;
  6. Flat fees paid by the lessee for telephone and reception services, clerical services, library services, reproduction services or facsimile services when such services are contracted for as part of the lease or are obligatory under the lease;
  7. Utility connect/disconnect charges;
  8. Improvements to the leased property made on behalf of the lessor; or
  9. Reimbursement for utility service in excess of the actual amount charged by the utility company.

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- B. Refundable deposits shall not be subject to tax at the time of receipt if such deposits are separate from gross receipts from commercial leasing and are maintained on the books and records of the lessor as a liability and not as income.
  - 1. Any portion of a refundable deposit which is retained by the lessor as a forfeited deposit shall be included in gross receipts subject to tax.
  - 2. Any portion of a refundable deposit which is not claimed by the tenant at the time the tenant departs shall be presumed to be abandoned property if not claimed within five years from the date of departure pursuant to A.R.S. Title 44, Chapter 3 and shall be reported and delivered as unclaimed property to the Department after the five-year period of time has elapsed.
  - 3. If amounts reported as income are claimed as refundable deposits, the burden of proof shall be on the taxpayer to show that the income reported is not gross receipts subject to tax.
- C. Nonrefundable charges, such as cleaning charges, shall be included in gross income at the time of receipt.

**Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2). Adopted effective April 21, 1995 (Supp. 95-2).

**R15-5-1605. Rental to Government Agencies**

- A. Gross receipts from the rental of real property to the United States Government, state of Arizona, or any other government agency shall be taxable under the commercial lease classification unless otherwise exempt.
- B. For periods beginning May 24, 1990, and ending on March 31, 1993, the gross receipts from the rental of a single unit of real property to the United States Government shall not be subject to tax if the lessor did not have any other commercial lease income and either of the following conditions existed:
  - 1. The real property was listed on the National Register of Historic Places; or
  - 2. The real property was leased to the United States Postal Service for use as a postal facility.

**Historical Head**

Amended effective April 21, 1995 (Supp. 95-2).

**R15-5-1606. Nonprofit Organizations**

- A. Nonprofit organizations shall be subject to tax under the commercial lease classification for gross receipts from the rental of real property unless otherwise exempt.
- B. Leases of real property to nonprofit organizations shall be subject to tax under the commercial lease classification unless otherwise exempt.

**Historical Head**

Amended effective April 21, 1995 (Supp. 95-2).

**R15-5-1608. Commercial property -- storage facilities**

Income from the rental of storage facilities is taxable, provided the lessee retains the right of direct access to the stored goods. Conversely, the storage of property by a warehouse, when the warehouse proprietor maintains full control over the specific location of the stored goods within the building, is not taxable. Such storage is deemed to be a service rather than rental of real property.

**R15-5-1609. Commercial property -- licensee agreements**

When a department store enters into an agreement with a licensee to provide space within the store which does not give the licensee exclusive right to any specific area within the store, the income from such an agreement is not subject to tax. The transaction is deemed to be a licensee agreement rather than the subleasing of real property.

**ARTICLE 17. RESTAURANT CLASSIFICATION**

**R15-5-1704. Providing Food or Drink to Government Agencies**

A restaurant's gross proceeds of sales or gross income from sales of food or drink to the United States Government, the state or its political subdivisions, or any other government agency, or its employees is included in the tax base under the restaurant classification unless exempt as a sale to a qualifying hospital under A.R.S. § 42-5074(B)(7) or as a sale *for consumption within the premises of a prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff* under A.R.S. § 42-5074(B)(9).

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4). R15-5-1704 corrected to reflect updated citation references to Arizona Revised Statutes (Supp. 06-4).

**R15-5-1705. Amusement Devices**

A restaurant's gross proceeds of sales or gross income from the operation of amusement devices is included in the tax base under the amusement classification (see Article 4).

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).

**R15-5-1706. Cover Charges**

A restaurant's gross proceeds of sales or gross income from a cover charge or other minimum charge is included in the tax base under the restaurant classification.

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).

**R15-5-1708. Gratuities (Tips)**

- A.** A restaurant's gross receipts from gratuities that are separately stated on the check or bill are not included in the restaurant's tax base if:
1. The exact amount charged on a check or bill for gratuities and any amounts attributable to credit card fees for gratuities, are segregated on the seller's records for the account of the employees actually providing the services; and
  2. The amounts so segregated less any amounts attributable to credit card fees for gratuities, are distributed directly to the employees providing the services for which the charges were made;
- B.** If a restaurant cannot specifically segregate the charges for gratuities and amounts, if any, attributable to credit card fees or if any portion of the amounts charged for gratuities less amounts attributable to credit card fees, is not distributed to the employees, the total gross receipts from the gratuities including any amounts attributable to credit card fees, are included in the tax base under the restaurant classification.

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).  
Amended by final rulemaking at 26 A.A.R. 2894, with an immediate effective date of November 6, 2020 (Supp. 20-4).

**R15-5-1709. Coupon Redemption**

A restaurant that accepts coupons is subject to transaction privilege tax on the full sales price of the food or beverage before the coupon value is deducted if the restaurant receives advertising, services, or products in exchange for providing the discounts.

**Historical Note**

Adopted effective November 7, 1978 (Supp. 78-6). Amended effective December 16, 1997 (Supp. 97-4).

**ARTICLE 18.1. SALES OF FOOD****R15-5-1860. Definitions**

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply:

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other non-staple foods.
2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs.
3. "Automatic retailer" means a coin operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers.
4. "Caterer" means a person engaged in the business of serving meals, food and drinks on the premises used by his customer, but does not include employees hired by the hour of day.
5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food and grocery items kept under refrigeration.
6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle.
7. "Food"
  - a. Under A.R.S. § 42-1387, the Department is required to promulgate rules defining food as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the Statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the Statute, and are therefore subject to the Sales Tax, shall be referred to herein as "taxable foods."
  - b. "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the Department does not consider food for human consumption:
    - i. Pet food and supplies
    - ii. Cosmetics and grooming items
    - iii. Tobacco products
    - iv. Soaps and paper products and household supplies
    - v. Dietary supplements such as vitamins or protein supplements
    - vi. Medicines

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- vii. Fertilizer
- 8. “Food for consumption on the premises”
  - a. “Food for consumption on the premises” means the following:
    - i. Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer.
    - ii. Hot or cold sandwiches including frozen sandwiches.
    - iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption).
    - iv. Food served with trays, glasses, dishes or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer.
    - v. Beverages sold in cups, glasses or open containers. Beverages shall include items such as milk shakes and ice cream floats.
    - vi. Food sold by caterers.
    - vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction, food for consumption on premises does not include sales of tax exempt food by a qualified retailer within the premises of a full time educational institution that charges tuition for a full course of studies.
  - b. Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable.
- 9. “Food intended for home consumption” means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption.
- 10. “Home” means a natural person’s usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.
- 11. “Premises” means the total space and facilities, including buildings, grounds and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer.
- 12. “Qualified retailer”
  - a. A qualified retailer or qualified retail business is one that may be eligible to sell tax exempt food without including the sale of tax exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer.
  - b. Qualified retailers are:
    - i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the food stamp program. If a retailer is eligible to participate in the food stamp program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Department to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include:
      - (1) Grocery stores;
      - (2) Convenience stores;
      - (3) Butcher shops;
      - (4) Bakeries;
      - (5) Dairy stores;
      - (6) Cheese stores;
      - (7) Farmer’s markets.
    - ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations.
    - iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups.
    - iv. Delicatessen business, if such retailer conducts his business so that the sale of tax exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax computing keys which are used to record taxable and tax exempt sales.
    - v. A retailer who is a street or sidewalk vendor who uses a pushcart.
    - vi. Vending machines and other automatic retailers.
- 13. “Staple food” means those food items intended for home preparation and consumption, which includes meat, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products.
- 14. “Taxable foods” are items which may be intended for human consumption, but are still subject to the Sales Tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises.
- 15. Tax-exempt foods

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- a. “Tax exempt foods” are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
  - b. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
  - c. The following are examples of items which the Department will consider as tax exempt food:
    - bread and flour products
    - vegetables and vegetable products
    - candy and confectionery
    - sugar, sugar products and substitutes
    - cereal and cereal products
    - butter, oleomargarine, shortening and cooking oils
    - cocoa and cocoa products
    - coffee and coffee substitutes
    - milk and milk products
    - eggs and egg products
    - tea
    - meat and meat products
    - spices, condiments, extracts and food colorings
    - fish and fish products
    - frozen foods
    - soft drinks and soda (including bottles on which a deposit is required to be paid)
    - fruit and fruit products
    - packaged ice cream products
    - dietary substitutes
    - ice cubes and bottled water including carbonated and mineral water
    - purchases of seed and plants for use in gardens to produce food items for personal consumption
16. “Two tax computing keys” shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted.

**Historical Note**

Adopted as an emergency effective June 30, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now amended and adopted effective October 15, 1980 (Supp. 80-5). Amended by final expedited rulemaking at 25 A.A.R. 327, effective January 14, 2019 (Supp. 19-1).

**R15-5-1862. Restaurant food sales**

- A. Restaurants are generally not qualified retailers, and therefore cannot sell food tax free, but are taxable upon all of their gross income or gross proceeds of sale.
- B. If a qualified retailer also operates a restaurant, the gross income or gross receipts of a sale from the two (2) activities must be kept separate. The gross receipts or gross income from the operation of the restaurant shall always be taxable, as will the income from all sales of taxable food and nonfood items. Except for items which may be exempt under some other provision, only tax-exempt foods sold by a qualified retailer not in connection with its restaurant operation shall be exempt.
- C. To the extent that a delicatessen may sell taxable food, such as hot or cold sandwiches, such delicatessen will be required to report under this classification. Since a delicatessen business may constitute a qualified retailer, such business may still be eligible to sell tax exempt food, if such sales are separately accounted for.

**Historical Note**

Adopted as an emergency effective June 30, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now amended and adopted effective October 15, 1980 (Supp. 80-5).

**ARTICLE 20. GENERAL****R15-5-2001. Renumbered****Historical Note**

Repealed effective August 13, 1987 (Supp. 87-3). New Section R15-5-2001 renumbered from R15-5-202 and amended effective October 14, 1993 (Supp. 93-4). R15-5-2001(4) corrected to reflect an updated citation reference to Arizona Revised Statutes (Supp. 06-4). Section R15-5- 2001 renumbered to R15-5-101 by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

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**R15-5-2002. Liability for Transaction Privilege Tax**

- A. The transaction privilege tax is imposed directly on the person engaged in a taxable business in or within Arizona, including a retailer located outside the state who is engaging or continuing in business in this state as a remote seller or marketplace facilitator and who meets the threshold requirements in A.R.S. § 42-5044. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.
- B. A retailer establishes its physical presence within Arizona by activities performed in this state on its behalf that are significantly associated with the retailer's ability to establish and maintain a market in this state for its sales. Activities and factors that, by themselves or in conjunction with others, establish a retailer's:
  - 1. The retailer maintains an office or other place of business in Arizona, regardless of whether such location performs a sales-related or other business function.
  - 2. The retailer owns or leases real or personal property in Arizona.
  - 3. The retailer maintains an inventory of products in Arizona at its own direction and control.
  - 4. The retailer's merchandise or goods are delivered into Arizona on vehicles owned or leased by the retailer and the retailer makes such deliveries into Arizona on an ongoing basis.
  - 5. Other local activities performed by the retailer's employees, agents, representatives, contractors, or affiliated persons in Arizona that enable the retailer to maintain and improve its name recognition, market share or sales volume, goodwill, and individual customer relations may establish physical presence if the activities are not of a transitory nature, as described in subsections (D) and (E). Such activities may include: soliciting sales through an ongoing local marketing contract; delivering, installing or repairing property sold to customers through an ongoing contract with either the customer or a local partner; or conducting training or similar support services for customers or for employees or representatives of the retailer on an ongoing basis.
- C. A retailer having a physical presence within Arizona as described in subsection (B) of this Section shall be considered liable for transaction privilege tax as a taxpayer located within Arizona.
- D. A retailer's activities in Arizona are not of a transitory nature if such activities generate gross receipts, are ongoing, and are regularly conducted from within the state. Alternately, a retailer's activities in Arizona are not of a transitory nature if such activities generate gross receipts and the retailer regularly conducts the same business activities outside of Arizona.
  - 1. Example: Employees who travel to Arizona for a business meeting, conference, or similar event and who do not otherwise engage in a taxable business activity during their time within the state would not establish physical presence in Arizona, regardless of the duration of their stay. Such stays would not be considered ongoing, even though the events take place in Arizona.
  - 2. Example: A retailer that provides remote one-time assistance to a customer who has a specific problem installing or using a product purchased remotely would not establish physical presence. The retailer's assistance does not appear ongoing and the activity is conducted from outside the state.
  - 3. Example: A retailer that sells WiFi-enabled (IoT) appliances also offers a service contract that allows its technicians to remotely access its customers' appliances to regularly update, maintain, or troubleshoot firmware. The provision of services through such contracts with Arizona customers would not establish physical presence for the retailer. The retailer's services, while ongoing, are conducted from outside the state.
  - 4. Example: A retailer that has a salesperson who regularly travels to Arizona for the purposes of selling goods and services and supporting previously sold goods and services may have physical presence, even if the salesperson is a resident of California and only present in Arizona temporarily throughout the calendar year. The retailer's sales activities, as conducted through its salesperson, are ongoing and conducted from within the state.
  - 5. Example: A retailer's employee who is a Nevada resident but is working remotely from Arizona while on vacation, performing bookkeeping and other routine business functions, does not establish physical presence in Arizona for the business. The employee's in-state activities are not significantly associated with a retailer's ability to establish and maintain a market in Arizona for its sales.
  - 6. Example: A new Utah-based retailer that has never made any sales to Arizona purchasers brings an inventory of crystals to sell at a two-day mineral and fossil show in Arizona. Over the two-day period, the retailer makes \$3,000 in sales. As an out-of-state retailer making sales from within Arizona who has not met the threshold requirements in A.R.S. § 42-5044, the retailer will incur an Arizona transaction privilege tax liability on the sales it makes at the show. Such Arizona-based sales are not considered for purposes of meeting the threshold requirements for a remote seller, pursuant to A.R.S. § 42-5044. If the retailer does not anticipate conducting additional sales from within Arizona on an ongoing basis, it should apply for a seasonal license to participate in the show.
  - 7. Example: At the same mineral and fossil show described in subsection (D)(6), a new Arizona-based retailer of semi-precious gems also brings an inventory to sell at the show for the first time. As a retail business located in Arizona, the retailer must be licensed and must report and remit Arizona transaction privilege tax on its sales made at the show.

- E. Effective October 1, 2019, a retailer that establishes physical presence in Arizona pursuant to this rule shall continue to be responsible for reporting and remitting transaction privilege tax for the duration of such physical presence. If the retailer terminates its physical presence in the state, it shall report and remit transaction privilege tax for all transactions occurring on or before the last day of the month in which the vendor terminates its physical presence.

**Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2002 renumbered from R15-5-204 and amended effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2003. Applicability of Provisions to Marketplace Facilitators and Remote Sellers**

Articles 1, 20, and 22 of this Chapter apply to any marketplace facilitator or remote seller who meets the threshold requirements in A.R.S. § 42-5044.

**Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2). New Section made by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2004. Multi-location and Multi-business Taxpayers**

A. A taxpayer with multiple licenses for separate businesses shall maintain separate records for each licensed business, including details relating to the computation of taxes and exempt sales and digital or hard copies of applicable exemption certificates, as provided in subsection (B).

B. The Department may request that records required to be maintained under this Section be made accessible for inspection or copying. To the extent reasonable or possible, the taxpayer shall make these records available to the Department in an electronic format, if requested.

C. A tax is levied upon the privilege of engaging in specified businesses within Arizona. Class codes for reporting gross receipts subject to tax have been determined by the Department based on statutory provisions. Each business classification is independent of the others even when transacted under one license. A person who engages in more than one type of business under each license shall maintain books and records so that the gross proceeds of sales or gross income of each taxable business classification is shown separately.

D. Except as provided in subsection (E), a marketplace facilitator shall maintain records that separately show sales made on its own behalf and sales made on behalf of marketplace sellers. Such records shall include details relating to the computation of taxes and exempt sales and also include digital or hard copies of applicable exemption certificates, as provided in subsection (B).

E. If a marketplace facilitator reported through non-amended returns and remitted transaction privilege tax on sales made on its own behalf and sales made on behalf of marketplace sellers for tax periods on or before August 27, 2019, the marketplace facilitator shall maintain records that show details relating to the computation of taxes and exempt sales, and also include copies of applicable exemption certificates for both sales made on their own behalf and on behalf of a marketplace seller. A marketplace facilitator shall have an alternate method to demonstrate the portion of sales made on behalf of marketplace sellers if under audit or for the purposes of claiming liability relief under A.R.S. § 42-5043 and R15-5-2216.

F. A remote seller shall maintain records that separately show sales made directly to its own customers and sales made on its behalf through a marketplace facilitator. Such records shall include details relating to the computation of taxes and exempt sales and also include digital or hard copies of applicable exemption certificates, as provided in subsection (B).

G. Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income applicable to a classification under which the taxpayer is doing business.

**Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2004 renumbered from R15-5-2215 and amended effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2007. Credit for Accounting and Reporting Expenses**

A. For purposes of this rule, the following definitions apply:

1. "Reporting period" means a calendar month unless another period is authorized pursuant to A.R.S. § 42-1322.
2. "Statutory delinquency date" means the date by which a payment of tax is considered delinquent pursuant to A.R.S. § 42-1322.
3. "Tax return" means the Transaction Privilege, Use, and Severance Tax Return (TPT-1).
4. "Taxable business" means a business which is subject to either transaction privilege or severance tax.
5. "Taxpayer" means taxpayer as defined in A.R.S. § 42-1322.04(C), including an entity which is exempt from state income tax. The following are considered a single taxpayer:
  - a. Members of an Arizona affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
  - b. Corporations in a unitary business filing a combined corporate income tax return under A.A.C. R15-2-1131(E);
  - c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return under A.A.C. R15-2-1131(E); or
  - d. Partnerships, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.

B. A taxpayer shall compute the credit, using the full amount of tax as required to be reported on the tax return, including any excess tax collected. The Department shall not allow a credit against taxes other than the state transaction privilege tax and the severance tax.

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- C. Except as provided in subsection (D), the Department shall not allow a credit if the taxpayer fails to pay the tax due before the statutory delinquency date. Failure to pay the tax due includes the following circumstances:
  - 1. The taxpayer makes an underpayment of tax due, including any estimated tax due, or,
  - 2. The taxpayer's check is dishonored.
- D. In the case of taxpayer computational error, the Department shall allow the credit based on the amounts originally filed, if the computational error resulted in the overpayment or underpayment of the tax actually due:
  - 1. In the case of an overpayment, the Department shall allow the credit on the actual amount of tax due for the reporting period.
  - 2. In the case of an underpayment, the Department shall allow the credit on the amount of the tax paid prior to the statutory delinquency date.
- E. To receive the credit for each reporting period, the taxpayer shall claim the credit on the tax return. If the taxpayer understates the amount of the credit on the tax return, the Department shall allow the amount of credit which the taxpayer has claimed. The taxpayer may file an amended return to claim any unclaimed portion of the credit if the taxpayer timely paid the tax upon which the credit is based. If the taxpayer overstates the amount of the credit, the Department shall allow the amount of credit actually permitted for the reporting period.
- F. A taxpayer is entitled to one credit, regardless of the number of licenses, businesses, or locations the taxpayer may have. Taxpayers with multiple licenses for separate businesses or separate locations shall elect the manner in which to allocate the credit among their licenses within the \$10,000 annual limitation. The election shall be made on a form 51-T. The taxpayer shall file the election on or before January 15 of the first year for which an election is being made or within 30 days prior to beginning operations if the taxpayer is a new business entity. The taxpayer is required to file an election one time; however, a new election may be filed under the following circumstances:
  - 1. If a taxpayer does not claim the entire \$10,000 credit during the calendar year, the taxpayer may amend the election at the end of the calendar year to reallocate the unclaimed portion of the credit for that particular year. This amended election shall be filed on or before January 31 of the following year. To claim the reallocated credit, the taxpayer shall file an amended tax return for each reporting period in which a sufficient tax was due and timely paid. For example: an individual owns three separate businesses with different transaction privilege tax licenses. At the beginning of the year, the individual allocates the \$10,000 credit as follows: \$3,000 to Company A; \$2,000 to Company B; and \$5,000 to Company C. At the end of the year, Companies A and B have claimed the credit up to their allocated amounts. However, Company C has only claimed \$1,000 of its allocated credit. Company A timely paid a sufficient amount of tax during the months of August and September to qualify for an additional \$4,000 credit. The individual may amend the election to reallocate the unclaimed credit to Company A. To claim the \$4,000 credit, the individual must file an amended tax return for Company A for the months of August and September.
  - 2. If a taxpayer acquires, sells, or terminates a taxable business during the calendar year, the taxpayer may amend the election at that time to reallocate the credit. The taxpayer shall only reallocate the portion of the credit which has not been claimed by the date on which the taxpayer acquires, sells, or terminates the business. The taxpayer shall ensure that the election relates to the acquired, sold, or terminated business and is made on a prospective basis only. The taxpayer shall notify the Department of the reallocation 30 days prior to the due date of the tax return for the reporting period to which the reallocation applies. For example: Corporation A is the common parent of Corporations B and C and elects to file a consolidated corporate state income tax return. Each of the three corporations conducts a taxable business activity. Since the three corporations file state income tax as one entity, Corporation A is required to allocate the \$10,000 credit among the three corporations. At the beginning of the year, Corporation A elects to allocate the entire \$10,000 credit to Corporation B. On July 1, Corporation A acquires Corporation D which also conducts a taxable business activity. Corporation A may amend its election at this time to take into account Corporation D. Corporation A may reallocate the portion of the credit not already claimed by Corporation B to Corporation D.
- G. Where a taxpayer is allocating the \$10,000 credit, the following rules apply:
  - 1. The Department shall allow a unitary business, filing a combined corporate state income tax return, or an Arizona affiliated group, filing a consolidated corporate state income tax return, one \$10,000 credit. The unitary business or affiliated group may allocate the credit among its members. If the unitary business or affiliated group fails to allocate the \$10,000 credit, the Department shall allocate the credit to the corporation in whose name the unitary business or affiliated group files its state income tax return regardless of whether the corporation conducts a taxable business.
    - a. If a corporation joins an Arizona affiliated group or unitary business during the calendar year, the Department shall classify the corporation as a separate taxpayer for the period before it joins the affiliated group or unitary business. The Department shall classify the corporation as the same taxpayer, an affiliated group, or unitary business for the period after it joins the affiliated group or unitary business. An affiliated group or unitary business may allocate the \$10,000 credit, even if a member corporation claimed the credit before it joined the affiliated group or unitary business.
    - b. If a corporation leaves an affiliated group or unitary business during the calendar year, the Department shall classify the corporation as the same taxpayer, an affiliated group, or unitary business for the period before it leaves the affiliated group or unitary business. The Department shall not classify the corporation as the same taxpayer for the period after it leaves the affiliated group or unitary business. The corporation, as a separate taxpayer or part of a separate taxpayer, may allocate the \$10,000 credit, even if the corporation claimed the credit before it left an affiliated group or unitary business.
  - 2. If a partnership, S corporation, trust, or estate conducts multiple taxable businesses, the Department shall allow the partnership, S corporation, trust, or estate one \$10,000 credit. The partnership, S corporation, trust, or estate may allocate the credit among its businesses. The credit shall not be allocated to the partners of a partnership, shareholders of an S corporation, or beneficiaries of a trust or estate.

## Department of Revenue – Transaction Privilege and Use Tax Section

3. In cases where the taxpayers are married and each spouse conducts a taxable business, the Department shall allow one \$10,000 credit per income tax return. If the married taxpayers file separate individual income tax returns, the Department shall allow each spouse one \$10,000 credit. If the married taxpayers file a joint income tax return, the Department shall allow one \$10,000 credit for the couple.

**Historical Note**

Renumbered from R15-5-3025 (Supp. 94-2). Amended effective August 13, 1996 (Supp. 96-3).

**R15-5-2009. Transactions Between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers**

A. In this Section, “affiliated person” has the same meaning as prescribed in A.R.S. § 42-5043.

B. For the purposes of determining whether a remote seller or marketplace facilitator meets the threshold requirements in A.R.S. § 42-5044, the sales of marketplace facilitators and remote sellers who are affiliated persons shall be aggregated. If the threshold is met after aggregation of such sales, then all affiliated marketplace facilitators and remote sellers shall register with the Department for the filing and remission of retail transaction privilege tax. Marketplace facilitators and remote sellers who are affiliated persons are required to register with the Department and obtain a transaction privilege tax license under this Section for each affiliated person even if some or none of the affiliated persons would meet the threshold on an individual basis.

C. A marketplace facilitator or remote seller with affiliated persons who meets the threshold requirements in A.R.S. § 42-5044 are not required to file consolidated returns.

D. For the purposes of determining whether a remote seller meets the threshold requirements in A.R.S. § 42-5044, only the remote seller’s sales that are not facilitated on a marketplace shall be counted towards its threshold.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2010. Transactions Between Affiliated Persons**

A. For purposes of this rule, the following definitions apply:

1. “Actual ownership” means direct ownership and control but does not include ownership by or through affiliated persons.
2. “Affiliated persons” means members of the individual’s family or persons who have ownership or control of a business entity.
3. “Constructive purchase price” means the fair market value or, if the fair market value cannot be determined, the value established by expert appraisal that takes into consideration all factors relevant to the transaction.
4. “Control of a business entity” means direct or indirect ownership or control of more than 50% of the business entity. The following guidelines, as to indirect ownership, shall apply for purposes of determining control of a business entity.
  - a. A corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.
  - b. An individual shall be considered as owning directly or indirectly that portion which is owned by or for members of the individual’s family.
  - c. The ownership of stock by a corporation, partnership, estate, or trust shall be considered actual ownership to its shareholders, partners, or beneficiaries for purposes of making another individual a constructive owner.
  - d. Ownership based on a family relationship shall not be treated as actual ownership by the related party for the purpose of making another individual a constructive owner.
5. “Fair market value” means the gross receipts that the transaction would have brought in the open market at a time and location similar to that of the affiliated party transaction and between a willing purchaser and a willing seller, who are not affiliated and have reasonable knowledge of the relevant facts.
6. “Members of the individual’s family” means the relationship of spouse, brothers, and sisters, whether by whole or half blood and including adopted persons, ancestors, and lineal descendants.

B. The tax shall be computed upon the constructive purchase price when:

1. The transaction is between affiliated persons, and
2. The facts and circumstances indicate that the reported gross receipts from the transaction are not indicative of the fair market value of the transaction.

**Historical Note**

Renumbered from Section R15-5-1850 and amended effective October 14, 1993 (Supp. 93-4). Corrected typographical error to reflect what was filed with the Office of Secretary of State October 14, 1993; changed “owner” to “owned” in subsection (A)(4)(a) (Supp. 97-1).

**R15-5-2011. Bad Debts**

A. The deduction of a bad debt shall be allowed from gross receipts if the following conditions apply:

1. The gross receipts from the transaction on which the bad debt deduction is being taken have been reported as taxable;

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Department of Revenue – Transaction Privilege and Use Tax Section

2. The debt arose from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money; and
  3. All or part of the debt is worthless.
- B.** A debt shall be considered worthless if:
1. The surrounding circumstances indicate that the debt is uncollectible; and
  2. Legal action to enforce payment has not or, in all probability, would not result in the satisfaction of the debt.
- C.** The bad debt deduction shall be computed by subtracting the amounts received on the debt from the amount originally reported as taxable. The portion of the amounts received on the debt representing carrying charges, interest, and repossession expenses, which have not been reported as taxable, shall not be allowed as a bad debt deduction.
- D.** A bad debt deduction shall be taken in the month in which the conditions of subsection (A) apply.
- E.** A bad debt deduction shall be allowed, pursuant to the provisions in this rule, on conditional or installment sales if:
1. The tax liability is paid on the full sales price of the tangible personal property at the time of the sale; or
  2. A contract or other financial obligation is sold to a third party as a sale with recourse and principal payments are made by the vendor to the third party, pursuant to the default of the original payor. Such principal payments may be taken as a bad debt deduction if the tax was paid by the vendor on the original sale of the tangible personal property or on the subsequent sale of the financing contract.
  3. For purposes of the bad debt deduction in situations of default on conditional or installment sales, a “sale with recourse” means that a vendor sells a contract or other financial obligation to a third party but retains liability for payment upon default of the original payor.
- F.** Any recovery of a bad debt subsequent to a bad debt deduction shall be reported as taxable gross receipts when received.

**Historical Note**

Renumbered from Section R15-5-1813 and amended effective October 14, 1993 (Supp. 93-4). Corrected misspelling in subsection (E)(3) from “retails” to “retains” (Supp. 94-2).

**ARTICLE 21. UTILITIES CLASSIFICATION**

**R15-5-2104. Interstate and Foreign Sales**

A person engaged in business under the utilities classification may deduct from the tax base gross receipts from sales of electricity, gas, or water, delivered through transmission lines or pipelines to a point in another state or country, from a point in this state and used outside this state.

**Historical Note**

Amended effective October 17, 1997 (Supp. 97-4).

**R15-5-2105. Locally Delivered Utilities**

A person engaged in business under the utilities classification is subject to tax on the gross receipts from sales of electricity, gas, or water, produced outside this state that is delivered through transmission lines or pipelines to a point in this state, for use in this state unless an exemption applies.

**Historical Note**

Amended effective October 17, 1997 (Supp. 97-4).

**R15-5-2106. Compressed and Bottled Liquids**

The gross receipts from sales of bottled gases and bottled water are subject to tax under the retail classification unless otherwise exempt.

**Historical Note**

Amended effective March 18, 1981 (Supp. 81-2). Amended effective October 17, 1997 (Supp. 97-4).

**R15-5-2107. Sales to Irrigation Districts**

A person engaged in business under the utilities classification is subject to tax on the gross receipts from producing and furnishing or furnishing electricity or gas to an irrigation district for the purpose of producing water for irrigation of farm lands or of lands subdivided for residential purposes which are entitled to irrigation water unless an exemption applies.

**Historical Note**

Amended effective October 17, 1997 (Supp. 97-4).

**R15-5-2110. Security Deposits**

Gross receipts from customer deposits that are held as security for payment of utility billings are not subject to tax until recognized as income. A deposit that is not applied to a customer’s bill or refunded to a customer when utility services are discontinued shall be presumed to be abandoned property if the customer does not claim it within the period established under A.R.S. Title 44, Chapter 3. Customer deposits that are presumed to be abandoned property under A.R.S. Title 44, Chapter 3, shall be reported and delivered to the Department as unclaimed property. Amounts delivered to the Department as unclaimed property are not included in the tax base. For example:

1. A utility company requires a new customer to deposit \$150 before it provides utility service. The customer moves and notifies the utility company to discontinue service. The customer’s final bill is \$130. The utility applies the deposit to the final bill and refunds \$20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The amount refunded to the customer is not recognized by the utility as income and is not subject to tax.

Department of Revenue – Transaction Privilege and Use Tax Section

2. A utility company requires a new customer to deposit \$150 before it provides utility service. The customer notifies the utility company to discontinue service. The customer's final bill is \$130. The utility applies the deposit to the final bill. The customer does not provide a forwarding address to the utility. Therefore, the utility company is not able to refund the remaining \$20 to the customer. The amount applied to the utility bill is recognized as income and subject to tax. The remaining \$20 is presumed to be abandoned property if not claimed under A.R.S. Title 44, Chapter 3. The amount presumed to be abandoned property shall be reported and delivered to the Department as unclaimed property under A.R.S. Title 44, Chapter 3. The amount delivered to the Department as unclaimed property is not recognized as income by the utility and is not subject to tax.

**Historical Note**

Amended effective October 17, 1997 (Supp. 97-4).

**BOARD OF RESPIRATORY CARE EXAMINERS**

Title 4, Chapter 45, Articles 1, 2, and 3, Board of Respiratory Care Examiners



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 13, 2021

**SUBJECT: BOARD OF RESPIRATORY CARE EXAMINERS**  
Title 4, Chapter 45, Board of Respiratory Care Examiners

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### Summary

This Five Year Review Report (5YRR) from the Board of Respiratory Care Examiners (Board) relates to rules in Title 4, Chapter 45, regarding the Board of Respiratory Care Examiners. The rules address the following:

- **Article 1: General Provisions;**
- **Article 2: Licensure; and**
- **Article 3: Hearings.**

### Proposed Action

The Board indicates that it requested initial approval from the Governor's office on February 12, 2021 to proceed with rulemaking to address the issues identified in the 5YRR. It anticipates completing a rulemaking to address the issues identified in Items 1 and 4 of the 5YRR when it receives approval from the Governor's office.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Board cites both general and specific statutory authority for the rules under review. The applicable statutes can be found here: <https://www.azleg.gov/arsDetail/?title=32>.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The economic impact has not differed from the impact that was anticipated in the:

- a. Final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 for R4-45-101, R4-45-105, R4-45-201, R4-45-203, R4-45-205, and R4-45-218;
- b. Exempt rulemaking at 23 A.A.R. 834, effective June 1, 2017 for R4-45-102, R4-45-208, and R4-45-209;
- c. Final rulemaking at 12 A.A.R. 968, effective May 6, 2006 for R4-45-103, R4-45-104, R4-45-202, R4-45-206, R4-45-212, R4-45-215, R4-45-216, R4-45-217, and R4-45-302;
- d. Final rulemaking at 14 A.A.R. 832, effective May 3, 2008 for R4-45-204, R4-45-207, R4-45-211, and R4-45-301; and
- e. Final rulemaking at 14 A.A.R. 3430, effective October 4, 2008 for R4-45-214.

**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 probable benefits of the rules outweigh the probable costs of the rules because the rules simply clarify statutory requirements without imposing any additional requirements. The rules impose the least burden and cost because they contain the information necessary for members of the public to understand how to obtain and maintain various respiratory care practitioner licenses.

**4. Has the agency received any written criticisms of the rules over the last five years?**

No. The Board did not receive any written criticisms of the rules over the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Board states the rules under review are clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Board states that the rules are consistent with other rules and statutes. However, the Board notes that it needs to amend its rules to comply with HB 2235 (2019), which established new temporary license requirements for health care professions. The Board

also states that it needs to amend its rules to require an address of record for licensees and needs to adopt rules regarding telehealth registry implementation issues.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Board states that the rules are effective in achieving their objectives, but R4-45-209 (Acceptable Continuing Education) could be more effective by including more continuing education providers.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board states that the rules are enforced as written.

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

The Board indicates that there are no corresponding federal laws to the rules under review.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board states that it issues general permits as defined in A.R.S. § 41-1001 and is in compliance with A.R.S. § 41-1037.

11. **Conclusion**

Council staff finds that the Board completed an adequate analysis of the rules pursuant to A.R.S. § 41-1056(A). Council staff notes that the Board has already requested approval from the Governor's office to conduct a rulemaking to address the issues identified in the 5YRR. Council staff recommends approval of this report.



Douglas A. Ducey  
Governor

State of Arizona  
Board of Respiratory Care Examiners  
1740 West Adams Street, Suite 3406  
Phoenix, Arizona 85007  
(602) 542-5995 FAX (602) 542-5900  
[www.rb.az.gov](http://www.rb.az.gov)

Jack Confer  
Executive Director

July 19, 2021

**SENT BY ELECTRONIC MAIL**

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Ave., Ste. 402  
Phoenix, AZ 85007

RE: Five-year-review Report for 4 A.A.C. 45, Articles 1, 2, and 3

In compliance with A.R.S. § 41-1056(A), the Arizona State Board of Respiratory Care Examiners (Board) has reviewed all of the rules in A.A.C. Title 4, Chapter 45, Articles 1, 2, and 3 and submits the enclosed report to the Council for approval. The Board certifies that it is in compliance with A.R.S. § 41-1091. The Board contact person for this report is Jack Confer, Executive Director, who may be reached at 602-542-5990.

Respectfully,

  
Jack Confer  
Executive Director

Attachment: Report

**Board of Respiratory Care Examiners**

**5 YEAR REVIEW REPORT**

**4 A.A.C. 45**

**July 29, 2021**

1. **Authorization of the rules by existing statutes:** A.R.S. §§ 32-3501 et seq.
2. **The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R4-45-101. Definitions	To provide definitions used in Chapter 45.
R4-45-102. Fees	To identify various fees charged by the Board.
R4-45-103. Service by the Board	To clarify how the Board may serve documents.
R4-45-104. Change of Name or Address	To clarify when and how a licensee must update name and address information with the Board.
R4-45-105. Electronic Communication	To identify which forms are available on the Board's website.
R4-45-201. Application	To clarify what information is required to submit an application for licensure.
R4-45-202. Approved Respiratory Therapy Training Programs	To clarify what training programs are approved by the Board.
R4-45-203. Examinations	To clarify what exam scores are required for licensure.
R4-45-204. Application by a Foreign-trained Applicant	To clarify application requirements for foreign-trained applicants.
R4-45-205. Application Based on Licensure by Another State	To clarify application requirements for an applicant who is licensed in another state.

R4-45-206. Licensure Based on Organizational Registration or Certification	To clarify when an examination is not required for licensure.
R4-45-207. Renewal	To clarify when and how a license may be renewed.
R4-45-208. Continuing Education Requirement	To clarify continuing education requirements for licensees.
R4-45-209. Acceptable Continuing Education	To identify acceptable continuing education credits.
R4-45-211. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement	To clarify when and how the Board may audit continuing education credits.
R4-45-212. Waiver of Requirements	To identify when a licensee may request waiver of the continuing education requirements.
R4-45-214. Standards of Professional Conduct	To identify conduct and practice that is contrary to recognized ethics standards.
R4-45-215. Procedures for Processing Initial License Applications; Time-frames	To clarify when and how the Board reviews an initial application for licensure.
R4-45-216. Procedures for Processing License Renewal or Reinstatement Applications; Time-frames	To clarify when and how the Board reviews a renewal application for licensure.
R4-45-217. Appeal from Denial	To clarify how an applicant may appeal the Board's decision to deny an application.
R4-45-218. Reinstatement Following Revocation; Modification of Probation	To clarify when and how a former licensee may have their license reinstated after the license has been revoked.
R4-45-301. Hearing Procedures	To clarify how the Board will conduct hearings before the Board.

R4-45-302. Rehearing or Review of Decision	To clarify how the Board will conduct rehearings and reviews of its decisions before the Board.
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- 3. Are the rules effective in achieving their objectives:** Yes, but R4-45-209 could be more effective by including additional continuing education providers.
- 4. Are the rules consistent with other rules and statutes:** Yes. However, HB2235 (2019) was signed into law on May 8, 2019 and established new temporary license requirements for health care professions. The Board needs to amend its rules to comply with these new temporary license requirements pursuant to A.R.S. §§ 32-3121 through 32-3124. The Board also needs to amend its rules to require an address of record for its licensees pursuant to A.R.S. § 32-3226. Finally, the Board needs to adopt rules regarding telehealth registry implementation issues pursuant to A.R.S. § 36-3606.
- 5. Are the rules enforced as written:** Yes.
- 6. Are the rules clear, concise, and understandable:** Yes.
- 7. Has the agency received written criticisms of the rules in the last five years:** No.
- 8. Economic, small business, and consumer impact comparison:** The economic impact has not differed from the impact that was anticipated in the:
- a. Final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 for R4-45-101, R4-45-105, R4-45-201, R4-45-203, R4-45-205, and R4-45-218.
  - b. Exempt rulemaking at 23 A.A.R. 834, effective June 1, 2017 for R4-45-102, R4-45-208, and R4-45-209.
  - c. Final rulemaking at 12 A.A.R. 968, effective May 6, 2006 for R4-45-103, R4-45-104, R4-45-202, R4-45-206, R4-45-212, R4-45-215, R4-45-216, R4-45-217, and R4-45-302.
  - d. Final rulemaking at 14 A.A.R. 832, effective May 3, 2008 for R4-45-204, R4-45-207, R4-45-211, and R4-45-301.
  - e. Final rulemaking at 14 A.A.R. 3430, effective October 4, 2008 for R4-45-214.
- 9. Has the agency received any business competitiveness analyses of the rules:** No.
- 10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report:** In the 5YRR that was approved in 2016, the Board proposed the following course of action and completed the proposed course of action:

R4-45-101: The Board plans to initiate rule amendments to amend the definition of “Approved continuing education” by October 2016. The board is contemplating amending several other definitions to conform with current policy and practice and to comply with SB1300.

The Board completed this course of action by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016.

R4-45-102: Promulgate renewal fee increase for biennial renewal of license to \$150.00 by October 2016. The Board voted to increase fees to address unfunded mandates and increase appropriation for: New Licensing and Enforcement Database (with all the online bells and whistles); fund 4 Employee Compensation Plan, fund 4th FTE which is currently vacant and hire a contract rule writer as necessary. The Board is currently amending this section, deleting the temporary license fee.

The Board completed this course of action by exempt rulemaking at 23 A.A.R. 834, effective June 1, 2017.

R4-45-104: The Board is contemplating a rule change to remove the requirement mandating notarization and certification of required documents for a name change. These amended rules may be submitted by July 2017.

The Board did not complete this course of action because the Board has determined that no changes are necessary at this time.

R4-45-204: The board is contemplating a rule change that will be initiated by July 2017.

The Board did not complete this course of action because the Board has determined that no changes are necessary at this time.

R4-45-207: The Board is planning to amend these rules to eliminate “reinstatement language” and refine the questions on the renewal application to be easily understood and usable. The Board plans these rule changes to be requested by July 2017.

The Board did not complete this course of action because the Board determined to pursue legislation to address reinstatement language prior to any rule changes.

R4-45-208: The Board has been authorized by SB1300 for exempt rulemaking to modify this rule. The Board plans to initiate by November 2016. The changes are contemplated to provide more continuing education opportunities for the industry and allow for additional automatic organization approvals on a local and national basis.

The Board completed this course of action by exempt rulemaking at 23 A.A.R. 834, effective June 1, 2017.

R4-45-209: The Board has been authorized by SB1300 for exempt rulemaking to modify this rule. The Board plans to initiate by November 2016.

The Board completed this course of action by exempt rulemaking at 23 A.A.R. 834, effective June 1, 2017.

R4-45-210: The Board has been authorized by SB1300 for exempt rulemaking to modify this rule. The Board plans to initiate by November 2016.

The Board repealed this rule by exempt rulemaking at 23 A.A.R. 834, effective June 1, 2017.

R4-45-213: This rule is currently being eliminated.

The Board repealed this rule by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016.

R4-45-214: The Board is contemplating amending and adding additional standards of professional conduct and may be initiating rule promulgation by July 2017. The Board will conduct a comparison to other health related boards in Arizona and will update and conform these rules as identified in the near future. The Board has not yet completed this review; however, based upon comments at Board meetings these rules will be amended and updated.

The Board did not complete this course of action because its current rules and statutes are sufficient to address complaints and sanctions.

11. **A determination that the probable benefits of the rule outweigh within this state the probably costs of the rule, and the rule imposes the least burden and costs to regulated persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:** The probable benefits of the rules outweigh the probable costs of the rules because the rules simply clarify statutory requirements without imposing any additional requirements. With the necessary changes identified in item 4, the rules will impose the least burdens and costs because they will contain the information necessary for members of the public to understand how to obtain and maintain various respiratory care practitioner licenses.
12. **Are the rules more stringent than corresponding federal laws:** There are no corresponding federal laws.
13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:** The Board issues general permits as defined in A.R.S. § 41-1001 and is in compliance with A.R.S. § 41-1027.
14. **Proposed Course of Action:** The Board requested initial approval from the Governor's office on February 12, 2021 to proceed with rulemaking regarding the issues identified in this report and

anticipates completing a rulemaking to address the issues identified in items 1 and 4 as soon as it receives approval from the Governor's office.



## **Replacement Check List**

For rules filed within the  
1st Quarter  
January – March 31, 2017

# THE ARIZONA ADMINISTRATIVE CODE

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

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## **Title 4. Professions and Occupations**

### **Chapter 45. Board of Respiratory Care Examiners**

Supplement 17-1

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-45-102, R4-45-208 through R4-45-210

REMOVE Supp. 16-3  
Pages: 1 - 9

REPLACE with Supp. 17-1  
Pages: 1 - 9

*The agency's contact person who can answer questions about rules in Supp. 17-1:*

Agency: State Board of Respiratory Examiners  
Name: Jack Confer, Executive Director  
Address: 1400 W Washington St., Suite 200  
Phoenix, AZ 85007  
Telephone: (602) 542-5990  
E-mail: [John@rb.az.gov](mailto:John@rb.az.gov)

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

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**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Public Services Division**

## PREFACE

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

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
March 31, 2017

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### **RULES**

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

### **THE ADMINISTRATIVE CODE**

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

### **ADMINISTRATIVE CODE SUPPLEMENTS**

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

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

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

### **HOW TO USE THE CODE**

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

### **ARTICLES AND SECTIONS**

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

### **HISTORICAL NOTES AND EFFECTIVE DATES**

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

### **ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](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 the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

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

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

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

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

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

### **EXEMPTIONS AND PAPER COLOR**

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

### **PERSONAL USE/COMMERCIAL USE**

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS**

(Authority: A.R.S. § 32-3504 et seq.)

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R4-45-101 through R4-45-104, amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).*

*Article 1, consisting of Sections R4-45-101 through R4-45-104, adopted effective September 12, 1996 (Supp. 96-3).*

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## Board of Respiratory Care Examiners

**ARTICLE 1. GENERAL PROVISIONS****R4-45-101. Definitions**

In addition to the definitions in A.R.S. § 32-3501, in this Chapter, unless otherwise specified:

“Applicant” means an individual who meets the qualifications of A.R.S. § 32-3523 and applies for licensure under A.R.S. § 32-3522.

“Approved continuing education” means a planned course or program that the Board confirms meets the criteria in R4-45-210 or is approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.

“Continuing education unit” or “CEU” means a segment of an approved continuing education.

“CRT examination” means the objective measure of essential knowledge, skills, and abilities required of an entry-level respiratory therapist, which is approved by the Board and administered by the NBRC.

“Day” means calendar day.

“Direct supervision” means that a licensed respiratory care practitioner, or physician licensed under A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient.

“Executive Director” means the officer employed by the Board to perform administrative and investigative functions.

“Grandfathered” means to license a respiratory therapist who has a CRT credential and applies for licensure before January 1, 2017 without meeting the qualifications required by these rules.

“License” means the document issued by the Board to practice respiratory care in Arizona.

“License application package” means a license application form and any documents required to be submitted with the license application form.

“Licensee” means an individual who holds a current license issued under A.R.S. Title 32, Ch. 35.

“National Board for Respiratory Care, Inc.” or “NBRC” means the national credentialing board for respiratory therapy.

“Pharmacological, diagnostic, and therapeutic agents,” as used in A.R.S. § 32-3501(5), means medications that are aerosolized and given through artificial airways or vascular access.

“RRT credential” means an award issued to a respiratory therapist by the NBRC who passes the RRT examination.

“RRT examination” means the objective measure of essential knowledge, skills, and abilities at a level that is higher than the CRT examination and that is required of a respiratory therapist and approved by the Board.

“Verification by a licensed respiratory therapist,” as used in A.R.S. § 32-3521(B)(7) and (C), means a licensee’s written confirmation, before equipment is delivered, that the equipment is consistent with the patient’s prescription and needs.

“Verification of license” means a form the Board provides to an applicant to submit for completion by a state to confirm that the applicant currently holds or previously held a license, certification, or registration from that state.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 5 A.A.R. 1110, effective

March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**R4-45-102. Fees**

- A.** Under the authority provided by A.R.S. § 32-3526 or other specified statutes, the Board establishes and shall collect the following fees:
1. Application for a license, \$100;
  2. Application based on a diploma from a foreign respiratory therapy school, \$200;
  3. Initial license, \$120;
  4. Biennial renewal of a license, \$150;
  5. Verifying an Arizona license to another state:
    - a. Current valid license, \$25;
    - b. Expired license, \$50;
  6. Duplicate license or duplicate wallet license card, \$25;
  7. Copy of the Board’s Respiratory Care Practitioner Register compiled under A.R.S. § 32-3504(A)(7):
    - a. Noncommercial, \$25;
    - b. Commercial, \$25 or the amount allowed under A.R.S. § 39-121.03(A), whichever is greater;
  8. Insufficient funds check submitted to the Board as payment of any fee, \$25;
  9. Fingerprint fee, authorized by A.R.S. § 41-1750(L), remitted by credit card, certified check, or money order, \$50; and
  10. Copy of the audiotape of a hearing under A.R.S. § 41-1092.07(E), \$25.
- B.** With the exception of the fingerprint fee specified in subsection (A)(10), all fees shall be remitted to the Board of Respiratory Examiners by personal check, credit card, certified check, or money order. All fees remitted to the Board are nonrefundable, except as provided in A.R.S. § 41-1077.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1575, effective April 4, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3). Amended by exempt rulemaking at 23 A.A.R. 834, under Laws 2016, Ch. 49 § 10, effective June 1, 2017 (Supp. 17-1).

**R4-45-103. Service by the Board**

Service of any decision, order, subpoena, notice, or other written process may be made by, for, or on behalf of the Board by personal service or by mailing a copy by certified mail. The Board shall make service by certified mail to the address of record on file with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is by certified mail, service is complete upon deposit in the United States mail.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-104. Change of Name or Address**

- A.** A licensee shall notify the Board in writing within 30 days after the licensee’s name is legally changed. The licensee shall include with the notice a notarized or certified copy of the official document evidencing the name change. At the time of

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notification, the licensee shall request a duplicate license in the new name and pay the fee prescribed in R4-45-102(A)(7).

- B. A licensee shall notify the Board in writing within 10 days after a change in the licensee's address of record.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective  
May 6, 2006 (Supp. 06-1).

**R4-45-105. Electronic Communication**

- A. To facilitate communication between the Board and an applicant, licensee, or continuing education provider, the Board shall make the following forms available on its web site:
1. Application for licensure,
  2. Verification of licensure,
  3. License renewal application, and
  4. Notice of change of address.
- B. After completing a form that is available on the Board's web site, an applicant or licensee shall submit the form to the Board electronically or by mail or personal delivery.
- C. An applicant or licensee that submits a form to the Board electronically shall use mail or personal delivery to submit or have submitted on behalf of the applicant other documents required under this Chapter.
- D. An applicant or licensee that does not have access to the Board's web site may request from the Board a printed copy of any form listed in subsection (A).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**ARTICLE 2. LICENSURE**

**R4-45-201. Application**

- A. In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on the Board's license application form:
1. The applicant's full name and Social Security number;
  2. The applicant's current mailing, permanent and e-mail addresses;
  3. The applicant's current employer's name, address, and telephone number;
  4. The applicant's current employment position and beginning date of employment;
  5. The applicant's current supervisor's name and telephone number;
  6. The applicant's area of care or specialty;
  7. The applicant's birth date;
  8. The applicant's home and work telephone numbers;
  9. Any name by which the applicant has ever been known. The applicant shall submit documentation of name change if the applicant is applying for licensure under a name different from that on the applicant's credentials, educational degree, or diploma;
  10. A statement of the facts entitling the applicant to take the RRT examination, to receive a license without examination under R4-45-206;
  11. The name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including the number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;

12. A statement whether the applicant has ever been denied a professional license or certificate or the privilege of taking an examination by a governing licensing authority and, if the answer is yes, a complete explanation of the denial including date, state or province, and a copy of any order issued;
  13. A statement whether the applicant is the subject of any pending disciplinary action that is directly or indirectly related to the practice of respiratory therapy and, if the answer is yes, a complete explanation, including date, state or province, and a copy of any order issued;
  14. A statement whether the applicant has ever voluntarily surrendered a professional license and, if the answer is yes, a complete explanation, including dates, state or province, and a copy of any order issued;
  15. A statement whether the applicant has ever filed an application for a respiratory care practitioner license in Arizona and, if the answer is yes, the date;
  16. A statement whether the applicant has been enrolled in or committed to a substance-abuse or alcohol-treatment program in the past 10 years and, if the answer is yes, a complete explanation, including date, place, and a copy of any documentation of completion of the program;
  17. Except for a minor traffic violation, a statement whether the applicant has ever been convicted of, pled no contest (nolo contendere) to, entered into any agreement concerning an arrest or charge (even if the agreement resulted in a dismissal or expungement of record), or has an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country and, if the answer is yes, a complete explanation, including place, date, and a copy of any pertinent documentation such as a court order or plea agreement;
  18. A statement whether the applicant has had an intemperance to drugs or alcohol within the last 10 years and, if the answer is yes, a complete explanation;
  19. The applicant's physical description, including height, weight, and eye and hair color;
  20. The highest level of education completed by the applicant;
  21. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.;
  22. Consistent with the Board's authority under A.R.S. § 32-3522(B)(4), other information or documentation the Board determines is necessary to evaluate the applicant fully;
  23. A record or documentation release; and
  24. The applicant's certification that the information provided is true and complete and that the applicant has not engaged in any act prohibited by Arizona law or this Chapter.
- B. An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:
1. If NBRC-registered, a copy of the applicant's:
    - a. NBRC-issued registration;
    - b. RRT examination results; or
    - c. If grandfathered, CRT examination results.
  2. If not NBRC-certified or registered, a copy of the applicant's diploma awarded upon successful completion of an approved respiratory therapy training program or letter of completion from the registrar of an approved respiratory therapy training program that provides the date of the applicant's successful completion;
  3. If ever licensed as a respiratory care practitioner in another state, the information specified in R4-45-205;

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4. If foreign-trained, the information specified in R4-45-204;
  5. The fee required under R4-45-102(A)(1); and
  6. A full set of fingerprints submitted on a card provided by the Board for a state and federal criminal background check along with the fee prescribed at R4-45-102(A)(10).
- C.** An applicant shall inform the Board in writing of a change in the applicant's address or other contact information within 10 days from the date of the change.
- D.** An applicant shall inform the Board immediately, by fax or e-mail, of the following:
1. A change in any non-contact information provided on the license application,
  2. A change in the applicant's employment status and the reason for the change, or
  3. Other information that a reasonable person would believe is relevant to the Board's decision to grant or deny a license to the applicant.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**R4-45-202. Approved Respiratory Therapy Training Programs**

The Board shall approve any respiratory therapy training program that is accredited by the Committee on Accreditation for Respiratory Care.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-203. Examinations**

- A.** Except when a license may be issued without an examination under A.R.S. § 32-3524 or grandfathered, an applicant shall pass the RRT examination. The passing score is the scaled score set by the NBRC.
- B.** An applicant shall inform the Board as soon as possible by one of the following methods that the applicant passed the RRT examination:
1. Forward to the Board a copy of either the examination results or certificate, or
  2. Direct the NBRC to forward to the Board a copy of either the examination results or certificate.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**R4-45-204. Application by a Foreign-trained Applicant**

An applicant who has a diploma from a respiratory therapy school located outside the United States shall:

1. Cause the school from which the diploma was issued to deliver to the Board a certified copy of course transcripts and other information concerning the applicant's course of study sufficient to enable the Board to determine whether the course of study is equivalent to a training program approved under R4-45-202, and

2. Submit a photocopy of the applicant's diploma from the foreign respiratory therapy school.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

**R4-45-205. Application Based on Licensure by Another State**

If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board:

1. A certified copy of the license;
2. A verification of license, completed, signed, and authenticated by seal or notarization by the Board of the state issuing the license; and
3. Either a copy of the results of the RRT examination or a copy of another examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent to the RRT examination.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**R4-45-206. Licensure Based on Organizational Registration or Certification**

The Board shall issue a license to an applicant without examination if the applicant:

1. Is qualified under A.R.S. § 32-3523,
2. Files an application for licensure under R4-45-201, and
3. Is registered or certified as a respiratory therapist by the NBRC.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-207. Renewal**

- A.** A respiratory care practitioner's first license expires on the licensee's second birthday following issuance of the license. Thereafter, a respiratory care practitioner's license expires every other year on the licensee's birthday.
- B.** To apply for renewal of a license, a licensee shall:
1. Complete a license renewal application form and provide the following information:
    - a. Applicant's full name;
    - b. Applicant's Arizona license number;
    - c. Applicant's mailing, permanent, and e-mail addresses and telephone number;
    - d. Applicant's highest educational degree;
    - e. Applicant's employment status;
    - f. Applicant's principal field of employment;
    - g. Current employer's name and address;
    - h. Current supervisor's name and telephone number;
    - i. Applicant's physical description, including height, weight, and eye and hair color;
    - j. A statement whether, since the time of last application, the applicant:
      - i. Has been arrested for, has pled guilty or no contest to, or has been convicted of a felony, mis-

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- demeanor, or undesignated offense, and if the answer is yes, a complete explanation, including place, date, charge, and a copy of any pertinent documentation such as a court order or plea agreement;
- ii. Has been arrested for a traffic violation that resulted in a fine greater than \$150, and if the answer is yes, a complete explanation, including date, offense, and a copy of any pertinent documentation such as a court order;
  - iii. Has been named in a civil or malpractice lawsuit relating to the applicant's employment as a respiratory care practitioner, and if the answer is yes, a complete explanation;
  - iv. Has been or is subject to any disciplinary action, consent order, or settlement regarding the applicant's license in any jurisdiction, and if the answer is yes, a complete explanation;
  - v. Has abused illegal substances, prescription drugs, or alcohol or been enrolled or committed to a substance-abuse or alcohol-treatment program, and if the answer is yes, a complete explanation, including date, place, and copy of any documentation of program completion; and
  - vi. Has been disciplined, suspended, or terminated from employment as a respiratory care practitioner, and if the answer is yes, a complete explanation;
- k. A statement of whether the applicant is in compliance with all federal and state law regarding storage, transfer, and access to medical records;
  - l. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; and
  - m. The applicant's certification that the information provided is true and complete;
2. Pay the renewal fee prescribed in R4-45-102(A)(4); and
  3. Complete the required continuing education units.
- C.** The Board shall notify a licensee of:
1. Need to renew the licensee's license,
  2. Expiration of the licensee's license, and
  3. Audit of the licensee's continuing education records.
- D.** If a license expires because it is not renewed timely, the former licensee may apply for late renewal within two years from the date of expiration. To apply for late renewal, the former licensee shall comply with subsection (B).
- E.** If a former licensee does not apply for late renewal under subsection (D), the former licensee may obtain a new license only by applying as a new applicant.
- F.** Misrepresentation of information on the license renewal application form or of compliance with the continuing education requirement in R4-45-208 constitutes grounds for disciplinary action.
- Historical Note**
- Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).
- R4-45-208. Continuing Education Requirement**
- A.** The following definitions apply to this Article:
1. "Acceptable documentation" means:
    - a. Transcripts;
    - b. Letters from course instructors; or
    - c. Certificates of Completion or other formal certifications provided by:
      - i. Hospitals;
      - ii. Course instructors; or
      - iii. Health organizations.
  2. "Initial licensure period" means the period of time from the date a licensee first obtains a license, to the date of the licensee's second birthday following the date a licensee first obtains a license.
  3. "Two-year licensure period" means the period of time two years from the initial licensure period, including the date a licensee renews a license pursuant to subsection (C).
- B.** Pursuant to A.R.S. § 32-3504(A)(9), a licensee shall acquire 20 CEUs during an initial licensure period and every two-year licensure period. A licensee shall acquire at least two of the 20 CEUs in ethics.
- C.** In order to renew a license, a licensee shall report compliance with the continuing education requirement.
- D.** A licensee shall maintain acceptable documentation for all CEUs for five years from the most recent date on the documentation,
- E.** Notwithstanding subsection (A), acceptable documentation other than a transcript must include the:
1. Licensee's full name;
  2. Title and date of the course or activity;
  3. Number of CEUs earned; and
  4. Instructor's name and signature.
- F.** A licensee shall submit acceptable documentation showing evidence of compliance only if requested by the Board.
- G.** The Board shall accept CEUs pursuant to R4-45-209.
- Historical Note**
- Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by exempt rulemaking at 23 A.A.R. 834, under Laws 2016, Ch. 49 § 10, effective June 1, 2017 (Supp. 17-1).
- R4-45-209. Acceptable Continuing Education**
- A.** The Board shall accept CEUs from a continuing education course approved by the:
1. American Academy of Allergy, Asthma & Immunology;
  2. American Academy of Pediatrics;
  3. American Academy of Physician Assistants;
  4. American Association for Respiratory Care and its state affiliates;
  5. American Association of Critical Care Nurses and its state affiliates;
  6. American College of Chest Physicians;
  7. American College of Emergency Physicians;
  8. American College of Physicians;
  9. American College of Health Care Executives;
  10. American Heart Association;
  11. American Lung Association and its state affiliates;
  12. American Medical Association and its state affiliates;
  13. American Nurses Association and its state affiliates;
  14. American Osteopathic Association and its state affiliates;
  15. American Thoracic Society and its state affiliates;
  16. Arizona Society for Respiratory Care;
  17. Center for Disease Control;
  18. Centers for Medicare Medicaid (Joint Commission);
  19. College of American Pathologists;
  20. National Asthma Educator Certification Board
  21. Red Cross of America;
  22. Society for American Anesthesiology; or
  23. Society of Critical Care Medicine and its state affiliates.
- B.** The Board shall accept no more than 15 CEUs during an initial licensure period or a two-year licensure period for courses or

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- activities a licensee completed online, except for live courses or activities a licensee completed online.
- C. The Board shall accept no more than five CEUs during an initial licensure period or a two-year licensure period in any one of the following courses:
1. Advanced cardiac life support;
  2. Neonatal advanced life support or neonatal resuscitation program; and
  3. Pediatric advanced life support.
- D. The Board shall not accept any CEUs in basic life support.
- E. The Board shall accept no more than 10 CEUs during an initial licensure period or a two-year licensure period for each NBRC specialty examination the licensee passes during the initial licensure period or the two-year licensure period.
- F. Notwithstanding subsection (E), the Board shall not accept CEUs for the following NBRC practitioner examinations:
1. The Therapist Multiple-Choice Examination; or
  2. The Clinical Simulation Examination.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by exempt rulemaking at 23 A.A.R. 834, under Laws 2016, Ch. 49 § 10, effective June 1, 2017 (Supp. 17-1).

**R4-45-210. Repealed****Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).  
Repealed by exempt rulemaking at 23 A.A.R. 834, under Laws 2016, Ch. 49 § 10, effective June 1, 2017 (Supp. 17-1).

**R4-45-211. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement**

The Board shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit documentation that demonstrates compliance with the continuing education requirement within the time specified in the audit notice. If the licensee fails to submit documentation that demonstrates compliance with the continuing education requirement on or before the date specified in the audit notice, the Board shall provide written notice of intent to revoke the license issued to the licensee.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

**R4-45-212. Waiver of Requirements**

- A. When applying for renewal of a license, a licensee may request a waiver from completion of the continuing education requirement. The Board shall grant a waiver only if the licensee verifies in writing that during the period immediately before expiration of the license, the licensee:
1. Resided in a country outside the United States for at least one year, reasonably preventing completion of the continuing education requirement;
  2. Was absent from Arizona for at least one year, reasonably preventing completion of the continuing education requirement; or

3. Was prevented from completing the continuing education requirement for reasons of health or other good cause including:
    - a. Physical or mental disability of the licensee for at least one year, reasonably preventing completion of the continuing education requirement; or
    - b. Physical or mental disability of a member of the licensee's family for at least one year and the licensee had responsibility for the family member's care, preventing completion of the continuing education requirement.
- B. A licensee who claims a disability under subsection (A)(3) shall submit with the waiver request a written verification of the disability by a licensed physician.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-213. Repealed****Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).  
Repealed by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**R4-45-214. Standards of Professional Conduct**

Conduct or practice that is contrary to recognized standards of ethics of the respiratory therapy profession, as used in A.R.S. § 32-3501(10)(i), includes the following:

1. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard;
2. Procuring or attempting to procure by fraud or misrepresentation a license or renewal of a license to practice respiratory care;
3. Violating a formal order, condition of probation, or stipulation issued by the Board, another regulatory entity of any state, or a court of law;
4. Obtaining a fee by fraud, deceit, or misrepresentation;
5. Falsely claiming attendance at an approved continuing education to meet license renewal requirements;
6. Endangering a patient's or the public's physical or emotional health or safety or engaging in conduct or practice that may reasonably be expected to do so;
7. Engaging in sexual intimacies with a patient unless the sexual intimacies were initiated before the practitioner-patient relationship was established;
8. Committing an act of sexual abuse, misconduct, harassment, or exploitation;
9. Acting in a manner that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient;
10. Abandoning or neglecting a patient, including leaving a respiratory therapy assignment before properly advising supervisory personnel;
11. Failing to report for scheduled duty without properly advising supervisory personnel;
12. Using or being under the influence of alcohol, illegal drugs or substances, or drugs or substances that impair judgment, while on duty in any health care work location;
13. Impersonating another licensed practitioner;

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14. Knowingly employing, directing, or supervising an individual in the performance of respiratory care who is not authorized to practice respiratory care;
15. Violating the confidentiality of information concerning a patient;
16. Inaccurately recording, falsifying, or altering a patient record, including a patient chart or medication administration record;
17. Misrepresenting or omitting a fact on an application for employment as a respiratory care practitioner;
18. Retaliating against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any practitioner;
19. Using, removing, or possessing property that belongs to an individual or entity without authorization;
20. Threatening the physical health or safety of a Board member or the Board's staff; and
21. Knowingly exceeding the scope of practice for a respiratory care practitioner at any health care location as the scope of practice is defined by the entity responsible for that health care location.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3430, effective October 4, 2008 (Supp. 08-3).

**R4-45-215. Procedures for Processing Initial License Applications; Time-frames**

- A. For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for an initial license application:
  1. Administrative completeness review time-frame: 15 days;
  2. Substantive review time-frame: 90 days;
  3. Overall time-frame: 105 days.
- B. The administrative completeness review time-frame listed in subsection (A)(1) begins on the date the Board receives a license application package. During the administrative completeness review time-frame, the Board shall notify the applicant that the package is either complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- C. An initial license application package is not complete until the Board receives the results of the state and federal criminal background check required at A.R.S. § 32-3504(A)(6), and the applicant fully complies with the requirements of R4-45-201, the applicable provisions of R4-45-202 through R4-45-206, and submits the fee prescribed in R4-45-102(A)(3).
- D. An applicant with an incomplete license application package shall supply the missing information within 210 days from the date of the notice. Both the administrative completeness review and overall time-frames are suspended from the date of the Board's notice until the date that the Board office receives all missing information.
- E. Upon receipt of all missing information, the Board shall notify the applicant that the license application package 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 in subsection (A)(1).
- F. If an applicant fails to submit the missing information within the 210 days provided under subsection (D), the Board shall

close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

- G. The substantive review time-frame listed in subsection (A)(2) begins on the date of the Board's notice of administrative completeness.
- H. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for the additional information. Both the substantive review and overall time-frames are suspended from the date on the Board's request until the date that the Board office receives the additional information.
- I. Within the time listed in subsection (A)(3), the Board shall grant or deny a license.
- J. 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 seek a fair hearing to challenge the denial; and
  3. The time period for appealing the denial.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-216. Procedures for Processing License Renewal or Reinstatement Applications; Time-frames**

- A. For the purposes of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for renewal or reinstatement of a license:
  1. Administrative completeness review time-frame: 7 days;
  2. Substantive review time-frame: 60 days;
  3. Overall time-frame: 67 days.
- B. The administrative completeness review time-frame listed in subsection (A)(1) begins on the date the Board receives a license renewal application package. Within seven days of receiving a license renewal application package, the Executive Director shall notify the applicant that the license renewal application package is complete or incomplete. If the license renewal application package is incomplete, the Board's notice shall specify the missing information.
- C. A license renewal application package is not complete until the applicant fully complies with R4-45-207 and R4-45-208.
- D. The Board shall not send a notice of completeness if the Board renews the license within the administrative completeness time-frame in subsection (A)(1).
- E. The Board shall substantively review a license renewal application package and grant or deny the renewal within 60 days from the postmark date of the completion notice as follows:
  1. For an applicant who submits a license renewal application package before the applicant's existing license expires:
    - a. If the license renewal application package is complete, the Board shall renew the license; or
    - b. If the license renewal application package is incomplete and the applicant supplies the missing information before the existing license expires, the Board shall renew the license;
  2. For an applicant with an incomplete license renewal application package who supplies the missing information within seven days after the date the applicant's license expires, or an applicant who submits a complete license renewal application package within seven days after the date that the applicant's license expires, the

## Board of Respiratory Care Examiners

Executive Director shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement regarding whether the applicant violated A.R.S. § 32-3556 during the time that the applicant's license was expired. The applicant shall submit the required statement within seven days from the postmark date of the Board's notice. Upon receipt of a complete license renewal application package and the signed statement:

- a. For an applicant who did not knowingly violate A.R.S. § 32-3556, the Board shall renew the license and issue a letter of concern within the substantive review time-frame;
- b. For an applicant who knowingly violated A.R.S. § 32-3556, the Board shall:

- i. Deny the renewal unless the applicant can demonstrate to the Board that no person was harmed by the violation, and the applicant understands the nature and consequences of the applicant's actions; or
- ii. Require the applicant to appear before the Board, present evidence regarding the applicant's violation of A.R.S. § 32-3556, and enter into an agreement regarding discipline. The Board shall conditionally renew the applicant's license. The Board shall remove the condition when the applicant complies fully with the agreement;

3. An applicant with an incomplete license renewal application package who supplies the missing information more than seven days after the date the applicant's license expires, or an applicant who submits a complete license renewal application package more than seven days but less than two years after the date the applicant's license expires, is an applicant for reinstatement. The Executive Director shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement regarding whether the applicant violated A.R.S. § 32-3556. The applicant shall submit the required statement within seven days from the postmark date of the Board's notice. Upon receipt of the signed statement, the Board shall:

- i. Deny the reinstatement unless the applicant can demonstrate to the Board that no person was harmed by the violation, and the applicant understands the nature and consequences of the applicant's actions; or
- ii. Require the applicant to appear before the Board, present evidence regarding the applicant's violation of A.R.S. § 32-3556, and enter into an agreement regarding discipline. The Board shall conditionally reinstate the applicant's license. The Board shall remove the condition when the applicant complies fully with the agreement.

- F. If the Board denies a license renewal or reinstatement, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time period for appealing the denial.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended

by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-217. Appeal from Denial**

- A. If the Board denies a license, an applicant may make a written request for a hearing to review the denial. The applicant shall file the request with the Board within 30 days following service of notice of the denial. The request shall state specifically the reasons why the Board should review its decision. The Board shall schedule the hearing at its next meeting or at the first meeting that is convenient for all parties.
- B. If an applicant who is denied a license does not request a hearing to review the denial or if the denial is affirmed, the Board shall administratively close the applicant's file. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 1110, effective March 22, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 968, effective May 6, 2006 (Supp. 06-1).

**R4-45-218. Reinstatement Following Revocation; Modification of Probation**

- A. Under A.R.S. § 32-3554, a former licensee whose license is revoked may apply to the Board after one year to have the license reinstated. A licensee who is placed on probation may apply to the Board after one year to have the conditions of probation modified.
- B. If a former licensee wishes to have a revoked license reinstated after the time stated in subsection (A), the former licensee shall meet the qualifications in A.R.S. § 32-3523(A) and comply with R4-45-201.
- C. A licensee who is placed on probation shall comply with R4-45-207 while on probation. If the licensee wishes to have the conditions of probation modified after the time stated in subsection (A), the licensee shall submit to the Board:
  1. A letter that contains the following information:
    - a. Name and address of licensee,
    - b. License number,
    - c. Date on which probation was imposed,
    - d. Reason that probation was imposed,
    - e. Conditions of probation,
    - f. Modification of conditions of probation requested, and
    - g. Reason a modification of conditions is warranted; and
  2. Evidence that supports the request for modification of conditions.
- D. The Board shall grant or deny a request for modification of conditions of probation based on its assessment of whether the licensee has complied with all conditions of probation and is able to practice respiratory care in a safe, skillful, and professional manner.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3430, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 2181, effective October 2, 2016 (Supp. 16-3).

**ARTICLE 3. HEARINGS****R4-45-301. Hearing Procedures**

The Board shall conduct all hearings, including those held under A.R.S. § 32-3553, according to the procedures in A.R.S. Title 41, Chapter 6, Article 10.

## Board of Respiratory Care Examiners

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective  
May 6, 2006 (Supp. 06-1). Amended by final rulemaking  
at 14 A.A.R. 832, effective May 3, 2008 (Supp. 08-1).

**R4-45-302. 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 and the rules established by the Office of Administrative Hearings.
- B.** Except as provided in subsection (I), 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 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; or
  7. The findings of fact or 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 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.** Not later than 15 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 the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 15 days after service of the motion. This period may be extended by the Board for a maximum of 20 days for good cause as described in subsection (H) or upon written stipulation of the parties. Reply affidavits may be permitted.
- H.** The Board may extend all time limits listed in this Section 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 been 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.
- I.** 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, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**Historical Note**

Adopted effective September 12, 1996 (Supp. 96-3).  
Amended by final rulemaking at 12 A.A.R. 968, effective  
May 6, 2006 (Supp. 06-1).

**ACUPUNCTURE BOARD OF EXAMINERS**  
Title 4, Chapter 8, Acupuncture Board of Examiners



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 20, 2021

**SUBJECT: ACUPUNCTURE BOARD OF EXAMINERS**  
Title 4, Chapter 8, Acupuncture Board of Examiners

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### Summary:

This Five-Year Review Report (5YRR) from the Acupuncture Board of Examiners (Board) relates to all rules in Title 4, Chapter 8 related to the licensing, certification, training, supervision, and discipline of acupuncturists in Arizona.

In the 5YRR approved by the Council in December 2010, the Board indicated it would amend R4-8-101, Table 1, R4-8-107, R4-8-203, R4-8-403, R4-8-407, R4-8-408, R4-8-502, and R4-8-702 and repeal R4-8-411 and R4-8-412. The Board did not complete this course of action by the next 5YRR which was approved by the Council in December 2015. The Board determined the issues identified in the 5YRR were not substantive enough to cause difficulty for those relying on the rules and that benefits from making the amendments did not outweigh the costs and unnecessary expenditure of scarce state resources.

However, in the present report, the Board indicates it did complete the proposed course of action initially outlined in the 2010 report through a rulemaking completed in 2016.

## **Proposed Action**

In the current report, the Board proposes to amend rules R4-8-103, R4-8-206, R4-8-207, R4-8-601, and R4-8-602 to improve their clarity, conciseness, understandability and effectiveness. The Board also proposes to repeal rules R4-8-701 through R4-8-706 as the Board indicates these rules, while effective, provide an unnecessary secondary and duplicative layer of regulation. The Board instead plans to replace them with a reference to the regulatory bill of rights. Finally, the Board indicates that recent legislative changes which will become effective in September 2021 will require additional changes to the rules. A copy of the legislation (SB1255) is attached for the Council's reference.

In the report, the Board indicates it will request an exemption from the rulemaking moratorium from the Governor's office and expects to submit a rulemaking package to the Council by December 2021. (The report states December 2020, however, after follow-up by Council staff, the Board indicated this is a typo, and intends to submit a rulemaking by December 2021).

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### **1. Has the agency analyzed whether the rules are authorized by statute?**

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

### **2. Summary of the agency's economic impact comparison and identification of stakeholders:**

In 2016, the State of Arizona Acupuncture Board of Examiners identified the stakeholders as: applicants for licensure and the Board.

The 2016 EIS stated that applicants would bear minimal costs associated with supplying fingerprints for licensure and would benefit by being able to obtain a license without incurring the cost of obtaining certification from a national certifying entity. The Board also incurred the costs of completing the rulemaking and implementing it.

The Board determined that the EIS prepared in 2016 when all of the rules were made or last amended was generally accurate. No new rulemakings have been completed since 2016.

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

The Board indicates the benefits of the rules outweigh the probable costs of the rule and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The Board also states the rules covering the subject matter are necessary to fulfill the agency's mission. However, the Board has not provided any additional information related to those determinations.

A.R.S. § 41-1056(A) requires that the agency provide a "concise analysis" of each factor, including the cost-benefit/least burdensome determination. *See* A.R.S. § 41-1056(A)(9). Council staff followed up with the Board regarding the analysis performed by the agency to determine that the benefits of the current rules outweigh the costs, that the rules are the least burdensome necessary to achieve their underlying regulatory objectives, and whether any alternatives to the current rules were considered. Council staff would encourage the Council to inquire of the Board the analysis done to reach its cost-benefit/least burdensome determination.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates the rules are generally clear, concise, and understandable except as to the following rules:

- **R4-8-601**: The Board indicates the current rules for filing and processing complaints are too restrictive to the public desiring to file a complaint. The Board believes this rule should be simplified and made more clear.
- **R4-8-602**: The Board indicates the complaint procedures are too complex for licensees who are managing the complaint process. The Board believes these rules should be simplified and more structure should be created to allow licensees to understand exactly what steps the Board may take at each meeting. Also, the Board states much of this rule belongs better in Policy rather than rule.
- **R4-8-701 through R4-8-706**: The Board indicates these rules are generally effective, however, they provide an unnecessary secondary and duplicative layer of regulation. The Board plans to repeal these rules and replace them with a reference to the regulatory bill of rights.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates the rules are generally effective except as to the following rules:

- **R4-8-103**: The Board indicates this rule is effective as written. However, in order to comply with a mandate to inform employers of disciplinary actions the Board indicates it must know of employment changes more swiftly than once every renewal.
- **R4-8-206**: The Board indicates this rule is effective, however, believes additional means of obtaining CE should be researched and included such as CPR cards etc.

- **R4-8-207**: The Board indicates this rule is effective, however, believes notarization of the auditing procedure for CE should be evaluated and made clearer so as to obtain a clear and accurate picture of compliance.
- **R4-8-601**: The Board indicates the current rules for filing and processing complaints are too restrictive to the public desiring to file a complaint. The Board believes this rule should be simplified and made more clear.
- **R4-8-602**: The Board indicates the complaint procedures are too complex for licensees who are managing the complaint process. The Board believes these rules should be simplified and more structure should be created to allow licensees to understand exactly what steps the Board may take at each meeting. Also, the Board states much of this rule belongs better in Policy rather than rule.
- **R4-8-701 through R4-8-706**: The Board indicates these rules are generally effective, however, they provide an unnecessary secondary and duplicative layer of regulation. The Board plans to repeal these rules and replace them with a reference to the regulatory bill of rights.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Board indicates that the rules are currently enforced as written.

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

Not applicable. The Board indicates there are no corresponding federal laws.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037, if a rule requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Board indicates the following rules were amended after July 29, 2010, and deal, at least tangentially, with issuance of a regulatory permit, license, or agency authorization: R4-8-102, Table 1, R4-8-203, R4-8-403, R4-8-407, and, R4-8-502. The Board indicates the rules deal with a regulatory permit, license, or agency authorization issued to qualified individuals to conduct activities that are substantially similar in nature, and therefore qualify as general permits. Council staff believes the Board is in compliance with A.R.S. § 41-1037.

**11. Conclusion**

This 5YRR from the Acupuncture Board of Examiners relates to all rules in Title 4, Chapter 8 related to the licensing, certification, training, supervision, and discipline of acupuncturists in Arizona. The Board indicates that the rules are generally clear, concise,

understandable, consistent, effective, and enforced, except as related to several rules as outlined above.

The Board intends to complete a rulemaking to address the issues with clarity, conciseness, understandability, and effectiveness as outlined above. Additionally, the Board intends to make amendments to the rules in response to recent statutory changes which will become effective in September 2021. The Board indicates it intends to submit a rulemaking package to the Council by December 2021.

Council staff encourages the Council to inquire of the Board the information and analysis used to determine that the probable benefits of the rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives, pursuant to A.R.S. § 41-1056(A)(9).



**STATE OF ARIZONA ACUPUNCTURE BOARD OF EXAMINERS**  
**[www.acupunctureboard.az.gov](http://www.acupunctureboard.az.gov)**

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1740 West Washington, Phoenix, Arizona 85007 \* Phone (602) 542-3095 \* Fax (602) 542-3093  
[www.acupunctureboard.az.gov](http://www.acupunctureboard.az.gov)

Douglas A. Ducey  
Governor

David Geriminsky  
Executive Director

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

Nicole Sornsinsin , Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: State of Arizona Acupuncture Board of Examiners Title 4, Chapter 8, articles 1-7, Five Year Review Report**

Dear Nicole Sornsinsin :

Please find enclosed the Five Year Review Report of the State of Arizona Acupuncture Board of Examiners for Title 4, Chapter 8, articles 1-7. The Board plans to submit rulemaking by December 31, 2021 due to legislation which passed during the 2021 legislative session.

The State of Arizona Acupuncture Board of Examiners hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact David Geriminsky at 480-253-8704 or [director@acupuncture.az.gov](mailto:director@acupuncture.az.gov) .

Sincerely,

A handwritten signature in blue ink, appearing to read "David Geriminsky", with a long horizontal flourish extending to the right.

David Geriminsky  
Executive Director  
Arizona Acupuncture Board of Examiners

**Governor's Regulatory Review Council**

**Five-Year-Review Report**

**State of Arizona Acupuncture Board of Examiners**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 32-3903(A)(1)

Specific Statutory Authority:

R4-8-101. A.R.S. § 32-3903(A)(1)

R4-8-102. A.R.S. §§ 32-3922 and 32-3924

R4-8-103. A.R.S. § 32-3903(A)(1)

R4-8-105. A.R.S. Title 41, Chapter 6, Article 7.1

Table 1. A.R.S. Title 41, Chapter 6, Article 7.1

R4-8-106. A.R.S. § 32-3927

R4-8-107. A.R.S. § 41-1028

R4-8-203. A.R.S. §§ 32-3903(A)(3) and 32-3924

R4-8-204. A.R.S. § 32-3925

R4-8-205. A.R.S. § 32-3925(D)

R4-8-206. A.R.S. § 32-3925(C)

R4-8-207. A.R.S. § 32-3925(C)

R4-8-208. A.R.S. § 32-3926

R4-8-301. A.R.S. §§ 32-3903(A)(3) and 32-3922

R4-8-302. A.R.S. § 32-3922

R4-8-303. A.R.S. § 32-3922(C)

R4-8-304. A.R.S. § 32-3922(B)

R4-8-401. A.R.S. § 32-3922(A)(1)

R4-8-402. A.R.S. §§ 32-3922(A)(2) and 32-3924

R4-8-403. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)

R4-8-404. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)

R4-8-405. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)

R4-8-407. A.R.S. §§ 32-3903(A)(6) and 32-3924(2)

R4-8-408. A.R.S. § 32-3925(C)

R4-8-409. A.R.S. § 32-3925(C)

R4-8-501. A.R.S. § 32-3901(4)(t)

R4-8-502. A.R.S. §§ 32-3901(4)(p) and 32-3952

R4-8-503. A.R.S. § 32-3922(B)

R4-8-601. A.R.S. §§ 32-3903(A)(2) and 32-3951

R4-8-602. A.R.S. §§ 32-3903(A)(2) and 32-3951

R4-8-603. A.R.S. § 32-3951(D)

R4-8-604. A.R.S. § 32-3951(D)

R4-8-605. A.R.S. § 32-3951

R4-8-702. A.R.S. §§ 41-1033 and 41-1056.01

R4-8-704. A.R.S. § 41-1023(F)

R4-8-706. A.R.S. § 41-1056

2. **The objective of each rule:**

Rule	Objective
R4-8-101	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. The definitions are designed to facilitate understanding by those who use the rules.
R4-8-102	Authentication of Documentation; Translation; Verification: The objective of this rule is to ensure that licensing applications and documents submitted to the Board are authentic and either in English or accompanied by an accurate translation. This increases efficiency in the licensing process by enabling the Board to act on an application without delay. It also increases consumer confidence that only qualified individuals are licensed.
R4-8-103	Change of Mailing Address, E-mail Address, or Telephone Numbers: The objective of the rule is to provide notice that the Board communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Board apprised of changes in contact information.
R4-8-105	Time-frames for Licensure, Certification, and Approval: The objective of this rule is to specify the time-frames within which the Board will act on an application for licensure, certification, or other approval. This enables an applicant to anticipate when the Board-approval process will be completed.
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 an application for licensure, certification, or other approval. This enables an applicant to anticipate when the Board-approval process will be completed.
R4-8-106	Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This increases efficiency in the licensing process by enabling an applicant to submit the correct amount.
R4-8-107	Materials Incorporated by Reference: The objective of this rule is to list materials the Board has incorporated by reference into the rules. Incorporating materials by reference enables the Board to benefit from the expertise of the professional organizations responsible for the materials.
R4-8-203	Application for Acupuncture License: 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. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.
R4-8-204	Renewal of Acupuncture License: The objective of this rule is to specify the requirements for renewal of a license, the manner in which renewal application is made, and consequences of failing to renew timely. This increases efficiency in the licensing process by enabling licensees to submit a timely and administratively complete renewal application and avoid having a license expire.
R4-8-205	Reinstatement of Acupuncture License: The objective of this rule is to define the circumstances under which an expired license may be reinstated and establish the requirements for reinstatement. This increases efficiency in the licensing process by enabling a licensee who misses the renewal date by 60 days or less to apply for reinstatement rather than the more cumbersome process of applying for a new license.
R4-8-206	Continuing Education Requirement: The objective of the rule is to specify the hours of continuing education that may be obtained from various activities, limitations on hours that may be obtained from various activities, and documentation required. This enables a licensee to have confidence that a continuing education activity will be accepted for license-renewal purposes.
R4-8-207	Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement: The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement and the manner in which an audited licensee is required to submit evidence of compliance. This enables a licensee to avoid being sanctioned for noncompliance.
R4-8-208	Application for Visiting Professor Certificate; Extension of Visiting Professor Certificate: The objective of this rule is to inform a visiting professor of the procedures for obtaining a certificate from the Board and for renewing the certificate. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.
R4-8-301	Application for Auricular Acupuncture Certificate: The objective of this rule is to specify the pieces of information and documents required to apply for certification. This increases efficiency in the certification process by enabling an applicant to submit an administratively complete application.
R4-8-302	Requirements for the Practice of Auricular Acupuncture: The objective of this rule is to prescribe the limits on practicing auricular acupuncture. This enables a certificate holder to avoid unprofessional conduct by working outside the scope of practice for an auricular acupuncturist.
R4-8-303	Renewal of an Auricular Acupuncture Certificate: The objective of this rule is to specify the requirements for renewal of a certificate, the manner in which renewal application is made, and consequences of failing to renew. This increases efficiency in the licensing process by enabling certificate holders to submit a timely and administratively complete renewal application and avoid having a certificate expire.
R4-8-304	Notice of Change of Supervisor: Because an auricular acupuncturist is required to work in a Board-approved program and under the supervision of a licensee, the objective of this rule is to ensure that the Board has accurate information regarding these requirements. This enables the Board to protect public health and safety by ensuring that an auricular acupuncturist is working under supervision.

R4-8-401	Auricular Acupuncture Training Program Approval: The objective of this rule is to establish the auricular acupuncture training programs that are approved by the Board and the requirements for obtaining approval of other auricular acupuncture training programs. This enables an individual who wishes to be certified as an auricular acupuncturist to save time and money by ensuring the individual attends a program the Board will accept.
R4-8-402	Clean Needle Technique Course Approval: The objective of this rule is to establish the standard and procedure for obtaining Board approval of a clean needle technique course. This increases efficiency in the licensing process by enabling a course provider to design a course that meets the Board's standards and can be approved.
R4-8-403	Approval of an Acupuncture, Clinical Training, or Preceptorship Training Program: The objective of this rule is to establish the minimum standards for obtaining Board approval of an acupuncture, clinical training, or preceptorship training program. This increases efficiency in the licensing process by enabling a training provider to assess whether to apply for Board approval of the program.
R4-8-404	Standards for Acupuncture or Clinical Training Program: The objective of this rule is to establish the standards that must be met to obtain Board approval of an acupuncture or clinical training program that is not accredited by or a candidate for accreditation by ACAOM. This increases efficiency in the licensing process by enabling a training provider to design a training program that meets the Board's standards required for approval.
R4-8-405	Documentation Required for Approval: The objective of this rule is to describe the documents and other evidence that must be submitted to the Board to show that an acupuncture or clinical training program meets the standards required for approval. This increases efficiency in the licensing process by enabling a training provider to submit or have submitted documentation required for Board approval.
R4-8-407	Program Monitoring; Records; Reporting: The objective of this rule is to describe the procedures used by the Board to ensure that an approved acupuncture, clinical training, or preceptorship training program continues to meet the standards required for approval. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring those who participate in approved training programs receive quality training.
R4-8-408	Approval of Continuing Education: The objective of this rule is to identify continuing education the Board approves without application and the standards the Board uses to decide whether to approve a continuing education. This provides a level playing field for all providers of continuing education.
R4-8-409	Application for Continuing Education Approval: The objective of the rule is to specify the requirements and procedures for obtaining the Board's approval of a continuing education course. This increases efficiency in the approval process by enabling a provider of continuing education to design and submit for approval only courses that meet the Board's standards.
R4-8-501	Treatment of Patients by Acupuncture Students; Supervision: The objective of this rule is to describe the nature of the supervision that must be provided when an acupuncture student treats a patient. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring that students are properly supervised when providing treatment to a patient..
R4-8-502	Recordkeeping: The objective of this rule is to specify the minimum recordkeeping standards for an acupuncturist, a provider of acupuncture, auricular

	acupuncture, clinical, or preceptorship training program, and a provider of an approved continuing education. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring accurate records are maintained. This also provides a degree of liability protection for those who provide services.
R4-8-503	Supervision of an Auricular Acupuncturist: The objective of this rule is to establish the expectations of a licensed acupuncturist who supervises an auricular acupuncturist. This enables the Board to fulfill its statutory responsibility of protecting the public by ensuring that an auricular acupuncturist is properly supervised.
R4-8-601	Making a Complaint: The objective of this rule is to specify who may file a complaint; against whom a complaint may be filed; and the information that must be included in a complaint.
R4-8-602	Complaint Procedures: The objective of this rule is to specify the procedures used by the Board to assess and respond to a complaint. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing clear direction regarding complaint procedures.
R4-8-603	Hearing Procedures: The objective of this rule is to emphasize that the Board conducts hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing notice of procedures to those for whom a hearing is scheduled.
R4-8-604	Rehearing or Review of Decision: The objective of this rule is to specify the manner in which the Board acts on a motion for rehearing or review of a Board decision and the circumstances under which a rehearing or review will be granted. 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.
R4-8-605	Disciplinary Action: The objective of this rule is to specify the factors the Board considers when deciding on an appropriate disciplinary action. This increases efficiency in the way the Board fulfills the Board's regulatory responsibilities by providing notice of factors considered to those who are subject to discipline.
R4-8-702	Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based upon Economic, Small Business or Consumer Impact: The objective of this rule is to prescribe the procedure for petitioning the Board under A.R.S. § 41-1033 or 41-1056.01. This provides transparency for the public regarding the method for challenging a Board rulemaking.
R4-8-704	Oral Proceedings: The objective of this rule is to establish the procedure for requesting that the Board hold an oral proceeding regarding a proposed rulemaking and the procedures the Board will follow when conducting an oral proceeding. This facilitates the rulemaking process by encouraging public participation.
R4-8-706	Written Criticism of Rule: The objective of this rule is to inform the public of how to criticize an existing rule and the nature of the Board's response to a written criticism. This facilitates the rulemaking process by encouraging public participation.

3. **Are the rules effective in achieving their objectives?** Yes X No    

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
R4-8-103	This rule is effective as written. However, in order to comply with a mandate to inform employers of disciplinary actions the Board must know of employment changes more swiftly than once every renewal.
R4-8-206	This rule is effective however additional means of obtaining CE should be researched and included such as CPR cards etc.
R4-8-207	This rule is effective however notarization the auditing procedure for CE should be evaluated and made clearer so to obtain a clear and accurate picture of compliance.
R4-8-601	The current rules for filing and processing complaints are too restrictive to the public desiring to file a complaint. This rule should be simplified and made more clear.
R4-8-602	The complaint procedures are too complex for licensees who are managing the complaint process. These rules should be simplified and more structure should be created to allow licensees to understand exactly what steps the Board may take at each meeting. Also, much of this rule belongs better in Policy rather than rule.
R4-8-(701-706)	These rules are generally effective however they provide an unnecessary secondary and duplicative layer of regulation. We plan to repeal these rules and replace them with a reference to the regulatory bill of rights.

4. **Are the rules consistent with other rules and statutes?** Yes  No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

5. **Are the rules enforced as written?** Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation
n/a	n/a

6. **Are the rules clear, concise, and understandable?** Yes  No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
N/A	N/A Except as noted in item 3

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. **Economic, small business, and consumer impact comparison:**

The Board determined that the economic impact statement prepared in 2016 when all of the rules were made or last amended was generally accurate

No new rulemakings have been completed since 2016.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

No analysis has been submitted.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Board completed the proposed action in the 2010 5YRR with rule making completing in 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 benefits of the rules outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency's mission.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The following rules were amended after July 29, 2010, and deal, at least tangentially, with issuance of a regulatory permit, license, or agency authorization: R4-8-102, Table 1, R4-8-203, R4-8-403, R4-8-407, and, R4-8-502.. The rules deal with a regulatory permit, license, or agency authorization issued to qualified individuals to conduct activities that are substantially similar in nature. The rules comply with A.R.S. § 41-1037.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Board will request an exemption from the rule making moratorium and expects to open a rule making package by December 2020 after and if supporting statutory changes have been passed. The purpose of the package would be to amend rules to address issues indicated above and to allow for more streamline e-commerce with the Board's licensees.

**Senate Engrossed**

**acupuncture board; members; auricular acupuncture**

**State of Arizona  
Senate  
Fifty-fifth Legislature  
First Regular Session  
2021**

**CHAPTER 312**  
**SENATE BILL 1255**

**AN ACT**

**AMENDING SECTIONS 32-3901, 32-3902, 32-3922 AND 32-3925, ARIZONA REVISED STATUTES; RELATING TO THE ACUPUNCTURE BOARD OF EXAMINERS.**

**(TEXT OF BILL BEGINS ON NEXT PAGE)**



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-3901, Arizona Revised Statutes, is amended to read:

**32-3901. Definitions**

In this chapter, unless the context otherwise requires:

1. "Acupuncture" means puncturing the skin by thin, solid needles to reach subcutaneous structures, stimulating the needles to produce a positive therapeutic response, ~~at a distant site REMOVING NEEDLES~~ and ~~the use of~~ USING adjunctive therapies.

2. "Adjunctive therapies" means the manual, mechanical, magnetic, thermal, electrical or electromagnetic stimulation of acupuncture points and energy pathways, auricular and detoxification therapy, ion cord devices, electroacupuncture, herbal poultices, therapeutic exercise and acupressure.

3. "Board" means the acupuncture board of examiners.

4. "TRAUMA" MEANS THE EXPERIENCE OF SIGNIFICANT PSYCHOLOGICAL DISTRESS FOLLOWING ANY TERRIBLE OR LIFE-THREATENING EVENT.

~~4.~~ 5. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Wilfully disclosing a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law.

(b) Committing a felony as evidenced by conviction by a court of competent jurisdiction.

(c) ~~Habitual intemperance~~ BEING HABITUALLY INTEMPERATE in the use of alcohol or any substance abuse that interferes with the ability to safely practice acupuncture.

(d) COMMITTING conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(e) Impersonating another acupuncturist or any other practitioner of the healing arts.

(f) Falsely acting or assuming to act as a member, an employee or an authorized agent of the board.

(g) Procuring or attempting to procure a license pursuant to this chapter by fraud or misrepresentation.

(h) Refusing to divulge to the board on demand the acupuncture method used in the treatment of a patient.

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

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

(k) ~~The refusal, revocation or suspension of~~ HAVING a license REFUSED, REVOKED OR SUSPENDED by any other state, district or territory of the United States or any other country, unless the action was not taken for reasons relating to the person's ability to safely and skillfully practice acupuncture or relating to an act of unprofessional conduct.

(l) COMMITTING conduct that is contrary to the recognized standards or ethics of the acupuncture profession or that may constitute a danger to the health, welfare or safety of the patient or the public.

(m) COMMITTING any conduct or HAVING ANY condition that may impair the ability to safely and skillfully practice acupuncture.

(n) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of or conspiring to violate this chapter or board rules.

(o) Advertising in a false, deceptive or misleading manner.

(p) Failing or refusing to maintain adequate patient health records or failing or refusing to make health records promptly available to the patient or to another health practitioner or provider on request and receipt of proper authorization.

(q) Deriving direct or indirect compensation from ~~the referral of~~ REFERRING a patient without disclosing to the patient in writing the extent of the compensation.

(r) Deriving a financial interest in products the acupuncturist endorses or recommends to the patient without disclosing to the patient in writing the extent of the financial interest.

(s) HAVING sexual intimacies with a patient in the practice of acupuncture.

(t) Failing to appropriately exercise control over or supervise an acupuncture student employed by or assigned to the practitioner in the practice of acupuncture.

(u) Failing to furnish information in a timely manner to the board or its investigators or representatives if the information is legally requested by the board.

(v) Supervising or engaging in a clinical training program in acupuncture without being approved and registered by the board for that program.

(w) Knowingly making a false, fraudulent or misleading statement, written or oral, to the board.

(x) Failing to exercise proper care for a patient by abandoning or neglecting a patient in need of immediate care without making reasonable arrangements for the continuation of care or by failing to refer the patient to another appropriate health care provider when necessary.

(y) Failing to use needles that have been sterilized according to clean needle technique principles approved by the board.

Sec. 2. Section 32-3902, Arizona Revised Statutes, is amended to read:

**32-3902. Acupuncture board of examiners; members; qualifications; terms; removal; compensation**

A. The acupuncture board of examiners is established consisting of the following members **WHO ARE** appointed by the governor:

1. **THROUGH JANUARY 16, 2022**, four members who are licensed to practice acupuncture pursuant to this chapter and who have practiced acupuncture in this state **OR ANY OTHER STATE** for at least ~~three years~~ **ONE YEAR**. Not more than two of these members ~~shall~~ **MAY** be graduates of the same school or college of acupuncture. The governor may make these appointments from a list of names submitted by a statewide acupuncture society. ~~The initial appointees need not be licensed pursuant to this chapter at the time of selection but shall meet all of the qualifications for licensure as prescribed by this chapter:~~

2. **THROUGH JANUARY 17, 2022**, three consumers who:

(a) Are not employed in a health profession.

(b) Do not have any pecuniary interest in a school of medicine or health care institution.

(c) Demonstrate an interest in health issues in this state.

3. **THROUGH JANUARY 17, 2022**, two members who are licensed pursuant to chapter 8, 13, 14, 17 or 29 of this title. These members shall not be licensed pursuant to the same chapter.

4. **BEGINNING JANUARY 17, 2022, ONE MEMBER WHO IS CERTIFIED OR LICENSED TO PRACTICE AURICULAR ACUPUNCTURE OR ACUPUNCTURE PURSUANT TO THIS CHAPTER.**

5. **BEGINNING JANUARY 20, 2022, THREE MEMBERS WHO ARE LICENSED TO PRACTICE ACUPUNCTURE PURSUANT TO THIS CHAPTER AND WHO HAVE PRACTICED ACUPUNCTURE IN THIS OR ANY OTHER STATE FOR AT LEAST ONE YEAR. NOT MORE THAN TWO OF THESE MEMBERS MAY BE GRADUATES OF THE SAME SCHOOL OR COLLEGE OF ACUPUNCTURE. THE GOVERNOR MAY MAKE THESE APPOINTMENTS FROM A LIST OF NAMES SUBMITTED BY A STATEWIDE ACUPUNCTURE SOCIETY.**

6. **FOR APPOINTMENTS MADE ON OR AFTER JANUARY 18, 2022, TWO CONSUMERS WHO MEET ALL OF THE FOLLOWING:**

(a) **ARE NOT EMPLOYED IN A HEALTH PROFESSION.**

(b) **DO NOT HAVE ANY PECUNIARY INTEREST IN A SCHOOL OF MEDICINE OR HEALTH CARE INSTITUTION.**

(c) **DEMONSTRATE AN INTEREST IN HEALTH ISSUES IN THIS STATE.**

7. **FOR APPOINTMENTS MADE ON OR AFTER JANUARY 18, 2022, ONE MEMBER WHO IS LICENSED PURSUANT TO CHAPTER 8, 13, 14, 17 OR 29 OF THIS TITLE.**

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. Board members shall be residents of this state for at least ~~three years~~ **ONE YEAR** immediately preceding their appointment.

D. Board members serve three-year terms to begin and end on the third Monday in January. A member shall not serve more than two consecutive terms.

E. The board shall meet in January of each year to elect a chairperson and ~~secretary~~ **VICE CHAIRPERSON.**

F. The board shall meet quarterly and at the call of the chairperson or a majority of board members.

G. Board members are eligible to receive compensation in an amount not to exceed ~~fifty dollars~~ \$50 per day for each day of actual service in the business of the board and are eligible for reimbursement of expenses necessarily and properly incurred in attending board meetings.

H. The governor may remove a board member from office for malfeasance, dishonorable conduct or unprofessional management of board duties.

I. The term of any member automatically ends on resignation or absence from this state for a period of at least six months. The governor shall fill vacancies for an unexpired portion of a term in the same manner as regular appointments.

J. Board members and board employees are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

Sec. 3. Section 32-3922, Arizona Revised Statutes, is amended to read:

32-3922. Acupuncture detoxification specialist for chemical dependency or trauma; certificate; requirements; fingerprints; informed consent; definition

A. The board may issue an ~~auricular~~ acupuncture **DETOXIFICATION SPECIALIST** certificate to a person who practices auricular acupuncture for the purpose of treating alcoholism, substance abuse, **TRAUMA** or chemical dependency if the person does all of the following:

1. Provides documentation of ~~successful completion of~~ **SUCCESSFULLY COMPLETING** a board-approved training program in acupuncture for ~~the treatment of~~ **TREATING** alcoholism, substance abuse, **TRAUMA** or chemical dependency that meets or exceeds standards of training established by the national acupuncture detoxification association or a board-approved group.

2. Provides documentation satisfactory to the board of successfully completing a board-approved clean needle technique course.

3. Submits an application as prescribed by the board and a fee prescribed by section 32-3927.

4. ~~Beginning January 1, 2019,~~ Submits a full set of fingerprints to the board 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.

5. Discloses in an application for initial certification or recertification all other active and past professional health care licenses and certificates issued to the applicant in this state or by another state, district or territory of the United States.

B. A certificate issued pursuant to this section allows the certificate holder to practice auricular acupuncture ~~in a substance abuse or chemical dependency program approved by the board, this state or the federal government~~ under the supervision of a person **WHO IS** licensed pursuant to this chapter.

C. A certificate issued pursuant to this section is valid for one year. The certificate may be renewed by the board if the certificate holder submits an application as prescribed by the board and a fee prescribed by section 32-3927 before the certificate expires.

**D. BEFORE TREATING A PATIENT, AN AURICULAR ACUPUNCTURIST SHALL OBTAIN FROM THE PATIENT A SIGNED INFORMED CONSENT THAT HAS BEEN APPROVED BY THE BOARD.**

~~D:~~ E. For the purposes of this section, "auricular acupuncture" means ~~the application of~~ **APPLYING** acupuncture needles to the pinna, lobe or auditory meatus to treat alcoholism, substance abuse, **TRAUMA** or chemical dependency.

Sec. 4. Section 32-3925, Arizona Revised Statutes, is amended to read:

32-3925. Renewal of license; continuing education

A. Except as provided in section 32-4301, a license issued pursuant to this chapter is subject to renewal each year and expires unless renewed.

B. The executive director shall send a renewal application to each licensee at least sixty days before expiration of the license.

C. A licensee shall ~~include with the application for renewal~~ **SUBMIT TO THE BOARD ON REQUEST** documentation satisfactory to the board that the licensee has successfully completed at least fifteen hours of ~~board approved~~ **BOARD-APPROVED** continuing education each year.

D. On compliance with board requirements for the renewal of licenses, the board may reinstate a license canceled for failure to renew.



**APPROVED BY THE GOVERNOR MAY 4, 2021.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2021.**



## **Replacement Check List**

For rules filed within the  
3rd Quarter  
July 1- September 30, 2016

# THE ARIZONA ADMINISTRATIVE CODE

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

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## **Title 4. Professions and Occupations**

### **Chapter 8. Acupuncture Board of Examiners**

Supplement Release Quarter: 16-3

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-8-101, Table 1, R4-8-203, R4-8-403, R4-8-407, R4-8-502

REMOVE Supp. 15-4  
Pages: 1 - 16

REPLACE with Supp. 16-3  
Pages: 1 - 17

*The Board's contact person who can answer questions about rules in Supp. 16-3:*

Agency: Acupuncture Board of Examiners  
Name: Pete Gonzalez, Executive Director  
Address: 1400 W. Washington St., Suite 230  
Phoenix, AZ 85007  
Telephone: (602) 364-0145  
Fax: (602) 542-3093  
E-mail: [PeteGonzalez@azacupunctureboard.us](mailto:PeteGonzalez@azacupunctureboard.us)  
Web site: [www.acupunctureboard.az.gov](http://www.acupunctureboard.az.gov)

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

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**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Public Services Division**

## PREFACE

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

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
September 30, 2016

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### **RULES**

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

### **THE ADMINISTRATIVE CODE**

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

### **ADMINISTRATIVE CODE SUPPLEMENTS**

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

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

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### **HOW TO USE THE CODE**

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

### **ARTICLES AND SECTIONS**

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

### **HISTORICAL NOTES AND EFFECTIVE DATES**

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

### **ARIZONA REVISED STATUTE REFERENCES**

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

### **SESSION LAW REFERENCES**

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

### **EXEMPTIONS FROM THE APA**

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

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

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

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

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

### **EXEMPTIONS AND PAPER COLOR**

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

### **PERSONAL USE/COMMERCIAL USE**

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 8. ACUPUNCTURE BOARD OF EXAMINERS**

*Title 4, Chapter 8 adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R4-8-101 through R4-8-106, adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2).*

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*Article 3, consisting of Sections R4-8-301 through R4-8-310, adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2).*

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*Former Article 4, consisting of Sections R4-8-401 through R4-8-403, recodified to Article 5 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).*

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*Former Article 5, consisting of Sections R4-8-501 through R4-8-506, recodified to Article 7 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).*

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Section

**ARTICLE 1. GENERAL PROVISIONS****R4-8-101. Definitions**

The definitions in A.R.S. § 32-3901 apply to this Chapter. Additionally, in this Chapter:

“ACAOM” means the Accreditation Commission for Acupuncture and Oriental Medicine.

“Acupuncture program” means a Board-approved training designed to prepare a student for the NCCAOM examination and licensure.

“Acupuncture student” means an individual enrolled in an acupuncture or auricular acupuncture training program.

“Acupuncturist” means an individual licensed or certified by the Board to practice acupuncture in this state.

“Administrative completeness review” means the Board’s process for determining whether an applicant provided a complete application packet.

“Applicant” means an individual who applies to the Board for an initial or renewal license or certificate.

“Application packet” means the fees, forms, documents, and additional information the Board requires to be submitted by an applicant or on an applicant’s behalf.

“Approved continuing education” means a planned educational experience the Board determines meets the criteria in R4-8-408.

“Auricular acupuncture” means a therapy in which the five-needle protocol is used to treat alcoholism, substance abuse, or chemical dependency.

“Clean needle technique” means a manner of needle sterilization and use that avoids the spread of disease and infection, protects the public and the patient, and complies with state and federal law.

“Clinical hours” means actual clock hours that a student spends providing patient care under the supervision of an individual licensed under R4-8-203 or R4-8-208.

“Course” means a systematic learning experience that assists a participant to acquire knowledge, skills, and information relevant to the practice of acupuncture.

“Day” means calendar day.

“Five-needle protocol” means a therapy, developed by NADA to treat alcoholism, substance abuse, or chemical dependency, which involves inserting five needles into specific points on the outer ear.

“Hour” means at least 50 minutes of course participation.

“Letter of concern” means an alternative sanction that informs a licensee or certificate holder that, while the evidence does not warrant disciplinary action, the Board believes the licensee or certificate holder should change certain practices and failure to change the practices may result in disciplinary action. A letter of concern is a public document that may be used in future disciplinary proceedings.

“NADA” means the National Acupuncture Detoxification Association.

“NCCAOM” means the National Certification Commission for Acupuncture and Oriental Medicine.

“Respondent” means an individual accused of violating A.R.S. Title 32, Chapter 39 or this Chapter.

“Successful completion of a clean needle technique course” means a course participant:

Attended the course, and

Received a passing score on an examination or other confirmation from the course provider that evidences the participant mastered the course content.

“Supervisor” means an acupuncturist licensed by the Board who is responsible for the oversight and direction of an acupuncture student or a certificate holder.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2175, effective August 2, 2016 (Supp. 16-3).

**R4-8-102. Authentication of Documentation; Translation; Verification**

- A. An applicant shall ensure that a document submitted to the Board by or on behalf of the applicant has an official or government seal or written verification authenticating the document. If the Board determines that an applicant cannot obtain the seal or verification through the exercise of due diligence, the Board shall waive this requirement.
- B. An applicant shall ensure that an official copy of any diploma, transcript, license, certificate, examination score, or other document required for application is forwarded directly to the Board by the issuing entity.
- C. An applicant shall ensure that a document submitted in a language other than English is accompanied by an original English translation, performed by a qualified translator who is not the applicant. The applicant shall ensure that the translation is accompanied by an Affidavit of Accuracy in which the translator who performed or verified the translation affirms, under oath and penalty of perjury, that the entire document has been translated, nothing has been omitted or added, and the translation is true and correct. The Board shall return an original translation to the applicant only if the applicant provides a photocopy of the entire translation, including the Affidavit of Accuracy.
- D. The following persons are regarded as qualified translators:
  1. An officer or employee of an official translation bureau or governmental agency;
  2. A professor or instructor who teaches the translated language at an accredited college or university in the United States. The professor or instructor shall ensure that the Affidavit of Accuracy includes the name of the course taught, is on official letterhead of the college or university, and is notarized;
  3. An American consul in the country where the translated document was issued. If a private translator translated the document, the American consul shall verify the translation as required under subsection (C) and the identity of the translator; and
  4. A consul general or diplomatic representative accredited in the United States, or other representative of a foreign government agency. If a private translator translated the document, the representative shall verify the translation as required under subsection (C) and the identity of the translator.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-103. Change of Mailing Address, E-mail Address, or Telephone Numbers**

The Board shall communicate with a licensee, certificate holder, or a person holding an approval from the Board using the contact information provided to the Board. To ensure timely communication from the Board, a licensee, certificate holder, or person holding an approval from the Board shall notify the Board, in writing, within 30 days of any change of mailing address (giving both the old and the new address), e-mail address, or residential, business, or mobile telephone number.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-104. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2451, effective December 7, 2010 (Supp. 10-4).

**R4-8-105. Time-frames for Licensure, Certification, and Approval**

- 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 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.
- B. The administrative completeness review time-frame begins when the Board receives an application packet or a 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. An applicant or person requesting approval whose application packet or request for approval is incomplete, 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 notify the applicant or person requesting approval that the application

packet or request for approval is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license, certificate, 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.
- 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 close the applicant's or person's file. To receive further consideration, an applicant or person requesting approval whose file is closed shall re-apply.
- I. Within the overall time-frame listed in Table 1, the Board shall:
  1. Grant a license, certificate, 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, certificate, or approval if the Board determines that the applicant or person requesting approval does not meet all criteria required by statute and this Chapter.
- J. If the Board denies a license, certificate, 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 applicant's or person'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 or person's right to request an informal settlement conference.
- K. 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**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

## Acupuncture Board of Examiners

**Table 1. Time-frames (in days)**

Type of license, certificate, or approval	Authority	Administrative Completeness Time-frame	Time to Complete	Substantive Review Time-frame	Time to Respond	Overall Time-frame
Acupuncture License	A.R.S. § 32-3924; R4-8-203	20	30	40	30	60
Visiting Professor Certificate	A.R.S. § 32-3926; R4-8-208	20	30	40	30	60
Auricular Acupuncture Certificate	A.R.S. § 32-3922; R4-8-301	20	30	40	30	60
Auricular Acupuncture Training Program	A.R.S. § 32-3922; R4-8-401	20	30	40	30	60
Acupuncture Program	A.R.S. § 32-3924(2); R4-8-403	20	30	40	30	60
Clinical Training Program	A.R.S. § 32-3924(2); R4-8-403	20	30	40	30	60
Clean Needle Technique Course	A.R.S. § 32-3924; R4-8-402	20	30	40	30	60
Continuing Education Approval	A.R.S. § 32-3925; R4-8-409	20	30	40	30	60
Renewal of License or Certificate	A.R.S. § 32-3925; R4-8-204 or R4-8-303	20	30	40	30	60
Extension of Visiting Professor Certificate	A.R.S. § 32-3926(C); R4-8-208	20	30	40	30	60
Reinstatement of License	A.R.S. § 32-3925(D); R4-8-205	20	30	40	30	60

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Table 1 amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Table 1 amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Table 1 amended by final rulemaking at 22 A.A.R. 2175, effective August 2, 2016 (Supp. 16-3).

**R4-8 106. Fees**

- A.** Under the authority provided at A.R.S. § 32-3927, the Board establishes and shall collect the following fees:
1. Application for an acupuncture license: \$150;
  2. Issuance of an initial acupuncture license: \$275;
  3. Renewal of an acupuncture license: \$275;
  4. Additional fee for late renewal of an acupuncture license: \$100;
  5. Application for an auricular acupuncture certificate: \$75;
  6. Issuance of an initial auricular acupuncture certificate: \$75;
  7. Renewal of an auricular acupuncture certificate: \$75;
  8. Visiting professor certificate: \$600;
  9. Extension of a visiting professor certificate: \$600; and
  10. Duplicate license or certificate: \$50.
- B.** Except as provided in subsections (B)(1) through (B)(3) or as required under A.R.S. § 41-1077, all fees are nonrefundable. The Board shall refund the fee paid under subsection (A)(2) or (A)(6) if:
1. The Board denies a license or certificate to an applicant,
  2. The Board closes the file of an applicant under R4-8-105, or
  3. An applicant withdraws an application.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by

final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-107. Materials Incorporated by Reference**

- A.** The Board incorporates the following material by reference:
1. "NADA Registered Trainer Resource Manual," 1999, published by the National Acupuncture Detoxification Association, 3220 N Street NW #275, Washington, D.C. 20007;
  2. "Clean Needle Technique Manual for Acupuncturists," 5th edition, 2004, published by the National Acupuncture Foundation, P.O. Box 137, Chaplin, CT 06235; and
  3. "Accreditation Handbook," Part One, 2005, published by the Accreditation Commission for Acupuncture and Oriental Medicine, Maryland Trade Center #3, 7501 Greenway Center Drive, Suite 260, Greenbelt, MD 20770.
- B.** The materials incorporated by reference under subsection (A) contain no later editions or amendments and are on file with the Board.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**ARTICLE 2. ACUPUNCTURE LICENSING; VISITING PROFESSOR CERTIFICATE****R4-8-201. Renumbered**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former Section R4-8-201 renumbered to R4-8-301 by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-202. Renumbered****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former Section R4-8-202 renumbered to R4-8-302 by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-203. Application for Acupuncture License**

A. To be licensed to practice acupuncture, an applicant shall submit an application packet to the Board that includes:

1. An application, on a form provided by the Board, that provides the following information about the applicant:
  - a. Name;
  - b. Other names by which the applicant has been known;
  - c. Date of birth;
  - d. Social Security number;
  - e. Home, business, and e-mail addresses;
  - f. Home, business, and mobile telephone numbers;
  - g. A statement of whether the applicant has ever been permitted by law to practice a health-care profession in this or another state, territory, or district of the United States, or another country or subdivision of another country, and if so:
    - i. A list of the jurisdictions in which the applicant has been permitted by law to practice a health-care profession;
    - ii. The number of each license;
    - iii. The date each license was issued;
    - iv. The date each license expired or expires;
    - v. Limitations, if any, for each license;
    - vi. Whether each license was granted by endorsement, examination, or another means;
  - h. A statement of whether the applicant is certified by the NCCAOM, and if so, whether the certification is active and current, and the dates of issuance and expiration;
  - i. If not certified by the NCCAOM, a statement of whether the applicant:
    - i. Has passed all the following NCCAOM modules: Point Location; Foundations of Oriental Medicine; Biomedicine; and Acupuncture; or
    - ii. Has passed the State of California Acupuncture Licensing Examination;
  - j. A statement of whether the applicant has completed an acupuncture program accredited within the United States or another country or subdivision of another country, and if so, the date of program completion;
  - k. A statement of whether the applicant has ever had a licensing authority of another state, district, or territory of the United States, or another country or subdivision of another country, deny the applicant a license or certificate to practice acupuncture, and if so, the name of the jurisdiction denying a license or certificate, date of the denial, and an explanation of the circumstances;
  - l. A statement of whether the applicant has ever had a licensing authority of another state, district, or terri-

tory of the United States, or another country or subdivision of another country, revoke, suspend, limit, restrict, or take any other action regarding the applicant's license or certificate to practice acupuncture, and if so, the name of the jurisdiction taking the action, the action taken, date of the action, and an explanation of the circumstances;

- m. A statement of whether the applicant has ever been convicted of a crime, including driving under the influence of drugs or alcohol, other than a minor traffic offense, and if so, the name of the jurisdiction in which convicted, the nature of the crime, date of the conviction, and current status;
  - n. A statement of whether the applicant has ever had a claim for malpractice or a lawsuit filed against the applicant alleging professional malpractice or negligence in the practice of acupuncture, and if so, the claim or case number, date of the claim or lawsuit, the matters alleged, and whether the claim or lawsuit is still pending or the manner in which it was resolved;
  - o. A statement of whether the applicant has any condition that may impair the applicant's ability to practice acupuncture safely and skillfully, and if so, the nature of the condition and any accommodations necessary;
  - p. A statement of whether the applicant has ever resigned, voluntarily or involuntarily, from a health-care facility while under investigation, and if so, the name of the health-care facility, the date of the resignation, and an explanation of the circumstances; and
  - q. A statement of whether the applicant has ever had a health-care facility terminate, restrict, or take any other action regarding the applicant's employment, professional training, or privileges, and if so, the name of the health-care facility, the date of the action, and an explanation of the circumstances;
2. An official record or document that relates to the applicant's explanation of an item under subsections (A)(1)(k) through (A)(1)(q);
  3. Documentation of one of the following:
    - a. Certification from the NCCAOM or its successor;
    - b. Certification by another certifying body recognized by the Board;
    - c. Certification as a result of passing a licensing or certifying examination in acupuncture; or
    - d. Authorization by law to practice acupuncture in another state, district, or territory of the United States, or another country or subdivision of another country with licensing standards substantially similar to those in this Chapter that has not been revoked;
  4. Documentation of successfully completing a Board-approved clean needle technique course. A copy of the certificate of completion showing the name of the course and the date on and location at which the course was completed is acceptable documentation;
  5. A 2" X 2" photograph, taken within the last year, that shows the front of the applicant's face;
  6. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and
  7. A complete set of fingerprints that meet the criteria of the Federal Bureau of Investigation and are taken by a law enforcement agency or other qualified entity;

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8. The amount charged by the Department of Public Safety to process fingerprints for a state and federal criminal records check; and
  9. The application and initial licensing fees prescribed by the Board under R4-8-106(A)(1) and (A)(2).
- B.** In addition to the materials required under subsection (A), an applicant shall provide evidence that the applicant completed at least 1,850 hours of training in acupuncture, including at least 800 clinical hours, by having submitted directly to the Board an official transcript from each school at which the applicant attended a Board-approved acupuncture program showing:
1. The name and address of the school,
  2. The dates on which the applicant attended the school,
  3. The courses and clinical training completed by the applicant,
  4. The number of hours in each course or clinical training,
  5. The grade or score obtained by the applicant in each course or clinical training, and
  6. Whether the applicant received a diploma or degree from the school.
- C.** In addition to complying with subsections (A) and (B), an applicant shall sign, date, and have notarized an affidavit that indicates all information provided in the application packet, including any accompanying documents submitted by or on behalf of the applicant, are true, complete, and correct.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2175, effective August 2, 2016 (Supp. 16-3).

**R4-8-204. Renewal of an Acupuncture License**

- A.** An acupuncture license expires 12 months after the date issued.
- B.** The Board shall provide a licensee with 60-days notice of the need to renew. It is the responsibility of the licensee to renew timely. Failure to receive notice of the need to renew does not excuse failure to renew timely.
- C.** If a licensee fails to submit a renewal application packet as described in subsection (D) on or before the expiration date, the licensee shall cease the practice of acupuncture.
- D.** To renew an acupuncture license, a licensee shall submit to the Board:
  1. A renewal application that provides the following information about the licensee:
    - a. Name;
    - b. License number;
    - c. Business name;
    - d. Home, business, and e-mail addresses;
    - e. Home, business, and mobile telephone numbers;
    - f. A statement of whether during the last 12 months a licensing authority of another state, district, or territory of the United States or another country or subdivision of another country denied the licensee a license or certificate to practice acupuncture and if so, the name of the jurisdiction denying a license or certificate, date of the denial, and an explanation of the circumstances;
    - g. A statement of whether during the last 12 months a licensing authority of another state, district, or territory of the United States or another country or subdivision of another country revoked, suspended, limited, restricted, or took other action regarding the license of the licensee and if so, the name of the jurisdiction taking action against the license, the action taken, date of the action, and an explanation of the circumstances;
  - h. A statement of whether during the last 12 months the licensee has been convicted of a crime, including driving under the influence of drugs or alcohol, other than a minor traffic offense, and if so, the name of the jurisdiction in which convicted, the nature of the crime, date of the conviction, and current status;
  - i. A statement of whether during the last 12 months a claim for malpractice or a lawsuit was filed against the licensee alleging professional malpractice or negligence in the practice of acupuncture, and if so, the claim or case number, date of the claim or lawsuit, the matters alleged, and whether the claim or lawsuit is still pending or the manner in which it was resolved;
  - j. A statement of whether during the last 12 months the licensee has any condition that may impair the licensee's ability to practice acupuncture safely and skillfully, and if so, the nature of the condition and any accommodations necessary;
  - k. A statement of whether during the last 12 months the licensee resigned, voluntarily or involuntarily, from a health-care facility while under investigation, and if so, the name of the health-care facility, the date of the resignation, and an explanation of the circumstances; and
  - l. A statement of whether during the last 12 months the licensee had a health-care facility terminate, restrict, or take any other action regarding the licensee's employment, professional training, or privileges, and if so, the name of the health-care facility, the date of the action, and an explanation of the circumstances;
2. An affirmation that the licensee completed the continuing education required under R4-8-206;
3. An affirmation that the licensee is in compliance with the requirements at A.R.S. § 32-3211;
4. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
5. The renewal fee required under R4-8-106(A)(3); and
6. The licensee's dated signature affirming that the information provided is accurate, true, and complete.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-205. Reinstatement of an Acupuncture License**

- A.** An individual whose acupuncture license expires because of failure to renew timely under R4-8-204(D) may apply to the Board for reinstatement of the acupuncture license by submitting, within 60 days after expiration of the license:
  1. The application packet described under R4-8-204(D);
  2. A sworn affidavit that the individual has not practiced acupuncture since the license expired; and
  3. The fee prescribed under R4-8-106(A)(4) for late renewal of an acupuncture license.
- B.** The Board shall not reinstate an acupuncture license that expires more than 60 days before the former licensee complies

with subsection (A). If an acupuncture license is expired for more than 60 days, the former licensee may apply for licensure by complying with R4-8-203.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former R4-8-205 renumbered to R4-8-206; new R4-8-205 renumbered from R4-8-206 and amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-206. Continuing Education Requirement**

- A.** A licensee shall complete at least 15 hours of approved continuing education per year.
- B.** The Board shall award hours in an approved continuing education as follows:
1. Seminar or workshop: One hour of continuing education for each contact hour;
  2. Course at an accredited educational institution: 15 hours of continuing education for each semester hour;
  3. Self-study, online, or correspondence course: Hours of continuing education determined by the course provider;
  4. Teaching an approved continuing education: One hour of continuing education for each hour taught;
  5. Having an article on the practice of acupuncture or traditional East-Asian medicine published in a peer-reviewed professional journal or in a text book: 15 hours of continuing education;
  6. Attending a Board meeting: One hour for attending one meeting during a year; and
  7. Having a text book published relating to the practice of acupuncture or traditional East-Asian medicine: 15 hours of continuing education.
- C.** The Board shall limit the number of hours of approved continuing education awarded as follows:
1. No more than 30 percent of the required hours may be obtained from teaching an approved continuing education. Hours may be obtained from teaching a particular approved continuing education only once during each year. No hours may be obtained from participating as a member of a panel at an approved continuing education; and
  2. Hours that exceed the maximum required during a year may not be carried over to a subsequent year.
- D.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved continuing education attended that includes the following:
1. Name of the licensee;
  2. License number of the licensee;
  3. Name of the approved continuing education;
  4. Name of the continuing education provider;
  5. Name of the entity that approved the continuing education;
  6. Date, time, and location of the approved continuing education; and
  7. Number of hours of approved continuing education.
- E.** A licensee shall maintain the evidence of attendance described in subsection (D) for two years and make the evidence available to the Board under R4-8-207 and as otherwise required under this Chapter.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former R4-8-206 renumbered to R4-8-205; new R4-8-206 renumbered

from R4-8-205 and amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-207. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement**

When notice of the need to renew a license is provided, the Board shall also provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit the documentation required under R4-8-206(D) at the same time that the licensee submits the renewal application packet required under R4-8-204(D). If a licensee fails to submit the required documentation with the renewal application packet before the date of expiration, the license expires.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-208. Application for Visiting Professor Certificate; Extension of Visiting Professor Certificate**

- A.** To obtain a visiting professor certificate, an applicant shall submit to the Board:
1. The application form required under R4-8-203(A) and a signed verification that the information provided is accurate, true, and complete;
  2. The fee required under R4-8-106(A)(8);
  3. Documentation of at least five years of experience in the practice of acupuncture;
  4. Evidence of skill and training in the subject that the applicant will be teaching, including one of the following:
    - a. Documentation from a college or university of experience, education, or other training in the subject the applicant will be teaching;
    - b. Documentation of experience in teaching the same or similar subject matter content within the two years before the application; or
    - c. Documentation of one year of experience within the last two years in the specialized area in which the applicant is teaching; and
  5. A detailed plan outlining the duties of the visiting professor.
- B.** A visiting professor certificate is valid for one year from the date issued. To extend a visiting professor certificate for another year, the certificate holder shall, at least 30 days before the certificate expires, submit to the Board an application for extension. An application for extension includes:
1. The renewal application form described in R4-8-204(D)(1) including a signed verification that the information provided is accurate, true, and complete;
  2. A letter on official letterhead from an official of the school of acupuncture at which the visiting professor will be teaching requesting that the extension be granted; and
  3. The fee required under R4-8-106(A)(9).
- C.** The Board shall not extend a visiting professor certificate more than twice.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-209. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section automatically repealed on January 31, 2001 (Supp. 02-3).

**R4-8-210. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section automatically repealed on January 31, 2001 (Supp. 02-3).

**ARTICLE 3. AURICULAR ACUPUNCTURE CERTIFICATION****R4-8-301. Application for Auricular Acupuncture Certificate**

To be certified as an auricular acupuncturist to provide auricular acupuncture services in a Board-approved alcoholism, substance abuse, or chemical dependency program, an applicant shall submit an application packet to the Board that includes:

1. An application, on a form provided by the Board, that provides the following information about the applicant:
  - a. Name;
  - b. Other names by which the applicant has been known;
  - c. Date of birth;
  - d. Social Security number;
  - e. Home, business, and e-mail addresses;
  - f. Home, business, and mobile telephone numbers;
  - g. A statement of whether the applicant has ever been permitted by law to practice auricular acupuncture in another state, territory, or district of the United States, or another country or subdivision of another country, and if so:
    - i. A list of the jurisdictions in which the applicant has been permitted by law to practice auricular acupuncture;
    - ii. The number of each license or certificate;
    - iii. The date each license or certificate was issued;
    - iv. The date each license or certificate expired or expires;
    - v. Limitations, if any, for each license or certificate;
    - vi. Current status of each license or certificate; and
    - vii. Whether each license or certificate was granted by endorsement, examination, or another means;
  - h. A statement of whether the applicant has ever had a licensing authority of another state, district, or territory of the United States, or another country or subdivision of another country, deny the applicant a license or certificate to practice auricular acupuncture, and if so, the name of the jurisdiction denying a license or certificate, date of the denial, and an explanation of the circumstances;
  - i. A statement of whether the applicant has ever had a licensing authority of another state, district, or territory of the United States, or another country or subdivision of another country, revoke, suspend, limit, restrict, or take any other action regarding the applicant's license or certificate to practice auricular acupuncture, and if so, the name of the jurisdiction taking the action, the action taken, date of the action, and an explanation of the circumstances;
  - j. A statement of whether the applicant has ever been convicted of a crime, including driving under the influence of drugs or alcohol, other than a minor

traffic offense, and if so, the name of the jurisdiction in which convicted, the nature of the crime, date of the conviction, and current status;

- k. A statement of whether the applicant has ever had a claim for malpractice or a lawsuit filed against the applicant alleging professional malpractice or negligence in the practice of auricular acupuncture, and if so, the claim or case number, date of the claim or lawsuit, the matters alleged, and whether the claim or lawsuit is still pending or the manner in which it was resolved;
  - l. A statement of whether the applicant has any condition that may impair the applicant's ability to practice auricular acupuncture safely and skillfully, and if so, the nature of the condition and any accommodations necessary;
  - m. A statement of whether the applicant has ever resigned, voluntarily or involuntarily, from a health-care facility while under investigation, and if so, the name of the health-care facility, the date of the resignation, and an explanation of the circumstances; and
  - n. A statement of whether the applicant has ever had a health-care facility terminate, restrict, or take any other action regarding the applicant's employment, professional training, or privileges, and if so, the name of the health-care facility, the date of the action, and an explanation of the circumstances;
2. An official record or document that relates to the applicant's explanation of an item under subsections (1)(h) through (1)(n);
  3. The application and initial certification fees prescribed by the Board under R4-8-106(A)(5) and (A)(6);
  4. Documentation of successfully completing a Board-approved:
    - a. Training program in auricular acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency. A copy of the certificate of completion showing the name, date, and location of the course is acceptable documentation; and
    - b. Clean needle technique course. A copy of the certificate of completion showing the name, date, and location of the course is acceptable documentation;
  5. The name, license number, and telephone number of the Arizona licensed acupuncturist who will supervise the applicant if the applicant is certified;
  6. A 2" X 2" photograph, taken within the last year, that shows the front of the applicant's face and that the applicant signs on the back or the white frame around the photograph;
  7. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and
  8. The applicant's dated and notarized signature affirming that the information provided in the application, including any accompanying documents submitted by or on behalf of the applicant, are true and complete.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-301 recodified to R4-8-401 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). New R4-8-301 renumbered from R4-8-201 and amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-302. Requirements for the Practice of Auricular Acupuncture**

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- A. A holder of an auricular acupuncture certificate shall provide auricular acupuncture services only in an alcoholism, substance abuse, or chemical dependency program approved by the Board or the state or federal government.
- B. A holder of an auricular acupuncture certificate shall provide auricular acupuncture services only under the supervision of an individual licensed under A.R.S. § 32-3924 and R4-8-203.
- C. The Board approves an alcoholism, substance abuse, or chemical dependency program that provides services and is licensed by the Arizona Department of Health Services as a behavioral health agency under A.R.S. Title 36, Chapter 4.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-302 recodified to R4-8-402 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). New R4-8-302 renumbered from R4-8-202 and amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-303. Renewal of an Auricular Acupuncture Certificate**

- A. An auricular acupuncture certificate expires 12 months after the date issued.
- B. The Board shall provide a certificate holder with 60-days notice of the need to renew. It is the responsibility of the certificate holder to renew timely. Failure to receive notice of the need to renew does not excuse failure to renew timely.
- C. If a certificate holder fails to submit a renewal application packet as described in subsection (D) on or before the expiration date, the certificate holder shall cease the practice of auricular acupuncture.
- D. To renew an auricular acupuncture certificate, a certificate holder shall submit to the Board:
  - 1. A renewal application that provides the following information listed about the certificate holder:
    - a. Name;
    - b. Certificate number;
    - c. Renewal date;
    - d. The name, address, and telephone number of the alcoholism, substance abuse, or chemical dependency facility at which the certificate holder works;
    - e. Residential and e-mail addresses;
    - f. Residential and mobile telephone numbers;
    - g. A statement of whether during the last 12 months a licensing authority of another state, district, or territory of the United States or another country or subdivision of another country denied the certificate holder a license or certificate to practice auricular acupuncture and if so, the name of the jurisdiction denying a license or certificate, date of the denial, and an explanation of the circumstances;
    - h. A statement of whether during the last 12 months a licensing authority of another state, district, or territory of the United States or another country or subdivision of another country revoked, suspended, limited, restricted, or took other action regarding the license or certificate of the certificate holder and if so, the name of the jurisdiction taking action, the action taken, date of the action, and an explanation of the circumstances;
    - i. A statement of whether during the last 12 months the certificate holder has been convicted of a crime, including driving under the influence of drugs or alcohol, other than a minor traffic offense, and if so, the name of the jurisdiction in which convicted, the

nature of the crime, date of the conviction, and current status;

- j. A statement of whether during the last 12 months a claim for malpractice or a lawsuit was filed against the certificate holder alleging professional malpractice or negligence in the practice of auricular acupuncture, and if so, the claim or case number, date of the claim or lawsuit, the matters alleged, and whether the claim or lawsuit is still pending or the manner in which it was resolved;
  - k. A statement of whether during the last 12 months the certificate holder has any condition that may impair the certificate holder's ability to practice auricular acupuncture safely and skillfully, and if so, the nature of the condition and any accommodations necessary;
  - l. A statement of whether during the last 12 months the certificate holder resigned, voluntarily or involuntarily, from a health-care facility while under investigation, and if so, the name of the health-care facility, the date of the resignation, and an explanation of the circumstances;
  - m. A statement of whether during the last 12 months the certificate holder had a health-care facility terminate, restrict, or take any other action regarding the certificate holder's employment, professional training, or privileges, and if so, the name of the health-care facility, the date of the action, and an explanation of the circumstances; and
  - n. The name, license number, and telephone number of the licensed acupuncturist who supervises the certificate holder;
- 2. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
  - 3. The renewal fee required under R4-8-106(A)(7); and
  - 4. The certificate holder's dated signature affirming that the information provided is accurate, true, and complete.
- E. The Board does not have authority to reinstate an expired auricular acupuncture certificate. An individual whose auricular acupuncture certificate expires because of failure to renew timely under subsection (D) may apply for certification by complying with R4-8-301.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Section R4-8-303 recodified to R4-8-403 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-304. Notice of Change in Supervisor**

- A. A certificate holder shall provide written notice to the Board within 10 days after one of the following occurs:
  - 1. The certificate holder changes employment from one approved alcoholism, substance abuse, and chemical dependency program to another;
  - 2. The certificate holder ceases to practice as an auricular acupuncturist; or
  - 3. The licensed acupuncturist supervising the certificate holder changes.
- B. A certificate holder required to provide notice under subsection (A), shall include the following information in the notice:
  - 1. Name and certificate number of the certificate holder;

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2. Name and address of the approved alcoholism, substance abuse, and chemical dependency program at which the certificate holder is employed; and
3. Name, license number, and telephone number of the licensed acupuncturist supervising the certificate holder; or
4. A statement that the certificate holder is not practicing as an auricular acupuncturist.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Section R4-8-304 recodified to R4-8-404 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-305. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-305 recodified to R4-8-405 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-306. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-306 recodified to R4-8-406 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-307. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Section R4-8-307 recodified to R4-8-407 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-308. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-308 recodified to R4-8-408 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-309. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-309 recodified to R4-8-409 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-310. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section R4-8-310 recodified to R4-8-410 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-311. Recodified****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Section R4-

8-311 recodified to R4-8-411 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-312. Recodified****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Section R4-8-312 recodified to R4-8-412 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**ARTICLE 4. TRAINING PROGRAMS AND CONTINUING EDUCATION****R4-8-401. Auricular Acupuncture Training Program Approval**

- A. The Board approves an auricular acupuncture training program that is recognized by NADA.
- B. To obtain Board approval of an auricular acupuncture training program that is not approved under subsection (A), the provider of the training program shall submit to the Board evidence that the program is:
  1. Conducted in accordance with the "NADA Registered Trainer Resource Manual," which is incorporated by reference in R4-8-107; and
  2. Approved by another board-approved certifying entity for acupuncture.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Former R4-8-401 recodified to R4-8-501; new Section recodified from R4-8-301 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-402. Clean Needle Technique Course Approval**

To be approved by the Board, a person that proposes to conduct a clean needle technique course shall submit to the Board evidence that the course is conducted in accordance with "Clean Needle Technique Manual for Acupuncturists," which is incorporated by reference in R4-8-107.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2435, effective August 6, 2005 (Supp. 05-2). Former R4-8-402 recodified to R4-8-502; new Section recodified from R4-8-302 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-403. Approval of an Acupuncture or Clinical Training Program**

- A. To be approved by the Board, the provider of an acupuncture program shall submit to the Board either:
  1. Documentation that the acupuncture program is a candidate for accreditation or has accreditation through the ACAOM and provides at least 1,850 hours of training, including at least 800 hours of clinical training; or
  2. Documentation that the acupuncture program meets the standards at R4-8-404(A).
- B. To be approved by the Board, the provider of an acupuncture clinical training program shall submit to the Board either:
  1. Documentation that the clinical training program is part of an acupuncture program that is a candidate for accreditation or has accreditation through the ACAOM, or is

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itself a candidate for accreditation or has accreditation through ACAOM; or

2. Documentation that the clinical program meets the standards at R4-8-404(B).

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former R4-8-403 recodified to R4-8-503; new Section recodified from R4-8-303 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2175, effective August 2, 2016 (Supp. 16-3).

**R4-8-404. Standards for an Acupuncture or Clinical Training Program**

- A. The Board shall approve an acupuncture program that does not meet the standard at R4-8-403(A)(1) only if the program:
  1. Is for at least three years;
  2. Complies with the essential requirements and attendant criteria in Part One of the "Accreditation Handbook," which is incorporated by reference in R4-8-107; and
  3. Provides the following course content and minimum hours:
    - a. Traditional East-Asian medical theory, diagnosis, treatment techniques in acupuncture, and related studies: 690 hours;
    - b. Clinical training: 800 hours; and
    - c. Biomedical clinical sciences: 360 hours.
- B. The Board shall approve an acupuncture clinical training program that does not meet the standard of R4-8-403(B)(1) only if the clinical training program:
  1. Is operated by a person who owns and operates an acupuncture clinic,
  2. Provides at least 75% of clinical instruction in the acupuncture clinic, and
  3. Provides direct patient contact in the following:
    - a. Supervised observation of the clinical practice of acupuncture with case presentations and discussions;
    - b. Application of Eastern and Western diagnostic procedures in evaluating a patient; and
    - c. Clinical treatment of a patient with acupuncture techniques.

**Historical Note**

New Section recodified from R4-8-304 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-405. Documentation Required for Approval**

To obtain Board approval of an acupuncture or clinical training program under R4-8-404, the provider of the program shall submit or have the custodian of program records submit to the Board documents and other evidence that demonstrates that the program meets the standards in R4-8-404. These documents and other evidence may include catalogues, course descriptions, curricula plans, and study bulletins.

**Historical Note**

New Section recodified from R4-8-305 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-406. Repealed****Historical Note**

New Section recodified from R4-8-306 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Repealed by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-407. Program Monitoring; Records; Reporting**

- A. The provider of an approved acupuncture or clinical training program shall submit to the Board, within 60 days after the close of the program's fiscal year, a letter attesting that the acupuncture or clinical training program continues to meet the standards of R4-8-403 or R4-8-404, and a course catalog that includes:
  1. A description of the courses in the next year's proposed curriculum;
  2. A list of members of the program faculty, administration, and governing body; and
  3. A description of the program facility.
- B. A representative of the Board may conduct an onsite visit of an approved acupuncture or clinical training program to review and evaluate the status of the program. The provider of the approved program shall reimburse the Board for direct costs incurred in conducting this review and evaluation.
- C. The provider of an approved acupuncture or clinical training program shall ensure that all student records are maintained in English.
- D. The provider of an approved acupuncture or clinical training program shall, within 30 days, report to the Board any failure to meet the standards at R4-8-403 or R4-8-404.

**Historical Note**

New Section recodified from R4-8-307 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2175, effective August 2, 2016 (Supp. 16-3).

**R4-8-408. Approval of Continuing Education**

- A. The Board shall approve a continuing education only if the continuing education:
  1. Is related to the knowledge or technical skills used to practice acupuncture safely and competently; or
  2. Is related to direct or indirect acupuncture patient care, including practice management, medical ethics, or Chinese language; and
  3. Includes a method by which the continuing education participants evaluate:
    - a. The extent to which the continuing education met its stated objectives,
    - b. The adequacy of the instructor's knowledge of the subject taught,
    - c. The use of appropriate teaching methods, and
    - d. The applicability or usefulness of the information provided; and
  4. Provides continuing education participants with a certificate of attendance that meets the requirements at R4-8-206(D).
- B. The Board shall approve a continuing education, without application under R4-8-409, if the continuing education is:
  1. Approved by a licensing board of acupuncture in another state,
  2. Provided by the Continuing Education Council of NCCAOM, or
  3. Provided by a board-approved acupuncture or clinical training program.

**Historical Note**

New Section recodified from R4-8-308 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-409. Application for Continuing Education Approval**

A. To obtain the Board's approval for a continuing education, the provider of the continuing education shall submit to the Board at least 45 days before teaching the continuing education:

1. A form, which is available from the Board, containing the following information:
  - a. Title of the continuing education;
  - b. Name and address of the continuing education provider;
  - c. Name, telephone and fax numbers of a contact person for the continuing education provider;
  - d. Date, time, and place at which the continuing education will be taught, if known;
  - e. Subject matter of the continuing education;
  - f. Method of instruction; and
  - g. Number of continuing education hours requested; and
2. The following documents:
  - a. Curriculum vitae of the continuing education instructor;
  - b. Objective of the continuing education;
  - c. Detailed outline of the continuing education;
  - d. Agenda for the continuing education showing the hours of instruction and the subject matter taught during each hour;
  - e. Method by which participants evaluate the continuing education, and
  - f. Certificate of attendance that meets the requirements at R4-8-206(D).

B. The provider of a continuing education that is not approved under R4-8-408(B) shall not advertise that the continuing education is approved by the Board until the Board acts on an application submitted under subsection (A).

C. The Board's approval of a continuing education is valid for one year unless there is a change in subject matter, instructor, or hours of instruction. At the end of one year or when there is a change in subject matter, instructor, or hours of instruction, the continuing education provider shall apply again for approval.

**Historical Note**

New Section recodified from R4-8-309 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-410. Repealed****Historical Note**

New Section recodified from R4-8-310 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Repealed by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-411. Expired****Historical Note**

New Section recodified from R4-8-311 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-

1056(J) at 22 A.A.R. 14, effective October 30, 2015 (Supp. 15-4).

**R4-8-412. Expired****Historical Note**

New Section recodified from R4-8-312 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 14, effective October 30, 2015 (Supp. 15-4).

**ARTICLE 5. SUPERVISION; RECORDKEEPING****R4-8-501. Treatment of Patients by Acupuncture Students; Supervision**

A. Before a supervising acupuncturist allows an acupuncture student to treat a patient, the supervising acupuncturist shall:

1. Consult with the acupuncture student regarding the treatment to be provided;
2. Ensure that the acupuncture student has the level of training required to provide the treatment safely and effectively;
3. Ensure that written evidence of informed consent is obtained from the patient indicating that the patient knows a student will be treating the patient; and
4. Ensure that the supervisor is physically present in the clinic during any patient treatment performed by the acupuncture student.

B. If an acupuncture student treats a patient, the supervising acupuncturist shall ensure that records of the treatment:

1. Are maintained as required under R4-8-502;
2. Include the written evidence of informed consent required under subsection (A)(3), and
3. Indicate the names of both the supervising acupuncturist and the acupuncture student.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 689, effective October 31, 2005 (Supp. 06-1). Former R4-8-501 recodified to R4-8-701; new R4-8-501 recodified from R4-8-401 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-502. Recordkeeping**

A. An acupuncturist shall:

1. Make a complete, legible, and accurate record of each patient to whom an acupuncture treatment is given. The acupuncturist shall ensure that a patient record is in English and includes:
  - a. Name of the patient,
  - b. Patient history,
  - c. Dates of treatment,
  - d. Treatment given, and
  - e. Progress made during acupuncture treatments; and
2. Maintain a patient record for six years after the last treatment of the patient or as prescribed at A.R.S. § 12-2297, whichever date occurs later.

B. The provider of an acupuncture, auricular acupuncture, or clinical training program shall:

1. Make accurate and complete records of:
  - a. Compliance with the program standards in Article 4, and
  - b. Students enrolled in the program. The provider shall ensure that a student record indicates:

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- i. Name of the student;
  - ii. Date enrolled;
  - iii. Courses taken;
  - iv. Grade obtained in each course;
  - v. Date on which the program was completed or the student ceased to participate; and
  - vi. Whether the student was awarded a diploma, degree, or certificate of completion.
2. Maintain the records required under subsection (B)(1)(a) for six years, and
  3. Maintain the records required under subsection (B)(1)(b) for 25 years after the student completes or is last enrolled in the program or as required by A.R.S. § 32-3001 et seq. and the rules of the Board of Private Postsecondary Education, whichever is longer.
- C. The provider of an approved continuing education shall:
1. Make accurate and complete records of:
    - a. The Board's approval of the continuing education;
    - b. The date, time, and location of each presentation of the continuing education; and
    - c. Participants at each presentation of the continuing education.
  2. Maintain the records required under subsection (C)(1) for two years.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former R4-8-502 recodified to R4-8-702; new R4-8-502 recodified from R4-8-402 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 22 A.A.R. 2175, effective August 2, 2016 (Supp. 16-3).

**R4-8-503. Supervision of an Auricular Acupuncturist**

A licensed acupuncturist supervising an auricular acupuncture certificate holder shall:

1. Be available promptly to consult with the auricular acupuncture certificate holder in person, by telephone, or electronically during normal working hours; and
2. Ensure that the auricular acupuncture certificate holder performs auricular acupuncture safely and effectively and complies with the law regarding auricular acupuncture.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 689, effective October 31, 2005 (Supp. 06-1). Former R4-8-503 recodified to R4-8-703; new R4-8-503 recodified from R4-8-403 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-504. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former R4-8-504 recodified to R4-8-704 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-505. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 689,

effective October 31, 2005 (Supp. 06-1). Former R4-8-505 recodified to R4-8-705 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-506. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2534, effective June 12, 2000 (Supp. 00-2). Former R4-8-506 recodified to R4-8-706 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**ARTICLE 6. COMPLAINTS; HEARING PROCEDURES; DISCIPLINE****R4-8-601. Making a Complaint**

- A. Anyone, including the Board, may file a complaint that alleges a violation of A.R.S. Title 32, Chapter 39 or this Chapter.
- B. A complaint may be filed against:
1. An individual licensed under A.R.S. § 32-3921 and R4-8-203;
  2. An individual certified under A.R.S. § 32-3922 and R4-8-301;
  3. An individual certified under A.R.S. § 32-3926 and R4-8-208; or
  4. An individual who is not exempt under A.R.S. § 32-3921(B) and believed to be practicing acupuncture without a license or certificate issued under A.R.S. Title 32, Chapter 39 and this Chapter.
- C. To file a complaint, an individual shall provide the following information, either orally or in writing, to the Board:
1. Date;
  2. Name, address, and telephone number of the individual complained against;
  3. Name, address, and telephone number of the complainant;
  4. If the complaint is filed on behalf of a third party, the name and address of the third party;
  5. The date on which the complaint was last discussed with the individual complained against or a representative of an involved business:
    - a. A statement of whether the last discussion of the complaint was by telephone or in person, and
    - b. The name of the individual with whom the complaint was last discussed; and
  6. A detailed description, including dates, of the events alleged to constitute a violation of A.R.S. Title 32, Chapter 39 or this Chapter.
- D. A complainant shall file a complaint within 90 days of the events alleged to constitute a violation of A.R.S. Title 32, Chapter 39 or this Chapter.
- E. A complainant may withdraw a complaint at any time by providing notice to the Board.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-602. Complaint Procedures**

- A. The Board shall review a complaint to determine whether it meets the requirements under R4-8-601. If a complaint does not meet the requirements under R4-8-601, the Board shall provide written notice to the complainant that the complaint is dismissed without further action.
- B. If the Board determines that a complaint meets the requirements under R4-8-601, the Board shall assess whether the complaint alleges a violation of A.R.S. Title 32, Chapter 39 or this Chapter and:

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1. Dismiss the complaint if the Board determines that the allegation, if true, does not amount to a violation of A.R.S. Title 32, Chapter 39 or this Chapter and provide written notice of the dismissal to the complainant; or
  2. Serve a copy of the complaint on the respondent if the Board determines that the allegation, if true, amounts to a violation of A.R.S. Title 32, Chapter 39 or this Chapter and provide the respondent with 20 days to submit:
    - a. A response in which the individual admits, denies, or further explains each allegation in the complaint; and
    - b. Records relevant to the complaint.
- C.** If a respondent responds to a complaint, the Board shall send a copy of the response to the complainant and provide five days for the complainant to submit a rebuttal.
- D.** When the times provided under subsections (B)(2) and (C) expire, the Board shall conduct an investigation and prepare a report that summarizes the complaint and results of the investigation. The Board shall:
1. Provide a copy of the investigative report to the complainant and respondent; and
  2. Provide written notice to the complainant and respondent of the date, time, and location of the Board meeting at which the complaint will be considered.
- E.** Both the complainant and respondent may be represented by an attorney at the Board meeting at which the complaint is considered.
- F.** At the Board meeting at which a complaint is considered, the Board shall:
1. Provide the complainant and respondent with an opportunity to address the Board, present evidence, and cross-examine witnesses; and
  2. Negotiate an equitable and just resolution of the matters asserted in the complaint; or
  3. Forward the complaint to a formal 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. This period may be extended by the Board for a maximum of 20 days for good cause as described in subsection (H) or by written stipulation of the parties. Reply affidavits may be permitted.
- H.** The Board may extend all time limits listed in this Section 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 been 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.
- I.** 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. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-603. Hearing Procedures**

The Board shall conduct any hearing required by law according to the procedures in A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-604. 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 (I), 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;

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-605. Disciplinary Action**

After a Board meeting at which a complaint is considered or after a hearing that results in a determination that a licensee or certificate holder violated A.R.S. Title 32, Chapter 39 or this Chapter, the Board shall consider the following factors to determine the degree of discipline to impose under A.R.S. § 32-3951:

1. Prior conduct resulting in discipline;
2. Dishonest or self-serving motive;
3. Amount of experience as an acupuncturist;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct;
7. Degree of harm resulting from the conduct; and

8. Whether harm resulting from the conduct was cured.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES**

**R4-8-701. Expired**

**Historical Note**

New Section R4-8-701 recodified from R4-8-501 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact**

- A.** A person may petition the Board under A.R.S. § 41-1033 for a:
1. Rulemaking action relating to a Board rule, including making a new rule or amending or repealing an existing rule; or
  2. Review of an existing Board practice or substantive policy statement alleged to constitute a rule.
- B.** A person may petition the Board under A.R.S. § 41-1056.01 objecting to all or part of a Board rule because the actual economic, small business, or consumer impact of the rule:
1. Exceeds the estimated economic, small business, or consumer impact of the rule; or
  2. Was not estimated and imposes a significant burden on persons subject to the rule.
- C.** To act under A.R.S. § 41-1033 or 41-1056.01 and this Section, a person shall submit to the Board a written petition including the following information:
1. The name, home or business and e-mail addresses, and telephone and fax numbers of the petitioner;
  2. Name of any person represented by the petitioner;
  3. If requesting a rulemaking action:
    - a. Statement of the rulemaking action sought, including the A.A.C. citation to all existing rules, and the specific language of a new rule or rule amendment; and
    - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
  4. If requesting a review of an existing Board practice or substantive policy statement:
    - a. Subject matter of the existing practice or substantive policy statement; and
    - b. Reasons why the existing practice or substantive policy statement constitutes a rule.
  5. If objecting to a rule because of its economic, small business, or consumer impact statement:
    - a. The A.A.C. citation of the rule to which objection is made; and
    - b. A description of how the actual economic, small business, or consumer impact of the rule differs from that estimated; or
    - c. A description of the actual economic, small business, or consumer impact of the rule and an assessment of the burden on persons subject to the rule; and
  6. Dated signature of the petitioner.
- D.** A person may submit supporting information with a petition.

**Historical Note**

New Section R4-8-702 recodified from R4-8-502 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-703. Expired**

**Historical Note**

New Section R4-8-703 recodified from R4-8-503 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-704. Oral Proceedings**

- A.** A person requesting an oral proceeding, as prescribed in A.R.S. § 41-1023(C), shall:
1. File the request with the Board;
  2. Include the name and current address of the person making the request; and
  3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the notice of the proposed rule is published.
- B.** The Board shall make a record of an oral proceeding. The Board shall make any material submitted during an oral proceeding part of the official rulemaking record.
- C.** The presiding officer shall use the following guidelines to conduct an oral proceeding:
1. Registration of attendees. Registration of attendees is voluntary;
  2. Registration of persons intending to speak. A person wishing to speak shall provide the following information on a form that is available from the Board:
    - a. Name,
    - b. Representative capacity, if applicable,
    - c. Whether the person supports or opposes the proposed rule, and
    - d. Approximate length of time the person wishes to speak;
  3. Opening of the record. The presiding officer shall open the proceeding by identifying the rule to be considered and the location, date, time, and purpose of the proceeding, and by presenting the agenda;
  4. A statement by Board representative. A Board representative shall explain the background and general content of the proposed rule;
  5. A public oral comment period. Any person may speak at an oral proceeding. A person who speaks shall address the proposed rule. A person who speaks may ask questions regarding the proposed rule and present oral argument, data, and views on the proposed rule. The presiding officer may limit the time allotted to each speaker and preclude undue repetition; and
  6. Closing remarks. The presiding officer shall announce the location and last day for submitting written comments about the proposed rule.

**Historical Note**

New Section R4-8-704 recodified from R4-8-504 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).  
Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

**R4-8-705. Expired**

**Historical Note**

New Section R4-8-705 recodified from R4-8-505 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).

**R4-8-706. Written Criticism of Rule**

- A.** A person may file a written criticism of an existing rule with the Board.
- B.** A person filing a written criticism of a rule shall identify the rule by its A.A.C. citation and specify why the rule is inadequate.

quate, unduly burdensome, unreasonable, or otherwise improper.

- C. The Board shall acknowledge receipt of any criticism within 15 days and place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

**Historical Note**

New Section R4-8-706 recodified from R4-8-506 at 13 A.A.R. 482, effective January 24, 2007 (Supp. 07-1).  
Amended by final rulemaking at 14 A.A.R. 690, effective April 5, 2008 (Supp. 08-1).

### 32-3901. Definitions

In this chapter, unless the context otherwise requires:

1. "Acupuncture" means puncturing the skin by thin, solid needles to reach subcutaneous structures, stimulating the needles to produce a positive therapeutic response at a distant site and the use of adjunctive therapies.
2. "Adjunctive therapies" means the manual, mechanical, magnetic, thermal, electrical or electromagnetic stimulation of acupuncture points and energy pathways, auricular and detoxification therapy, ion cord devices, electroacupuncture, herbal poultices, therapeutic exercise and acupressure.
3. "Board" means the acupuncture board of examiners.
4. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:
  - (a) Wilfully disclosing a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law.
  - (b) Committing a felony as evidenced by conviction by a court of competent jurisdiction.
  - (c) Habitual intemperance in the use of alcohol or any substance abuse that interferes with the ability to safely practice acupuncture.
  - (d) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
  - (e) Impersonating another acupuncturist or any other practitioner of the healing arts.
  - (f) Falsely acting or assuming to act as a member, an employee or an authorized agent of the board.
  - (g) Procuring or attempting to procure a license pursuant to this chapter by fraud or misrepresentation.
  - (h) Refusing to divulge to the board on demand the acupuncture method used in the treatment of a patient.
  - (i) Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.
  - (j) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of acupuncture.
  - (k) The refusal, revocation or suspension of a license by any other state, district or territory of the United States or any other country, unless the action was not taken for reasons relating to the person's ability to safely and skillfully practice acupuncture or relating to an act of unprofessional conduct.
  - (l) Conduct that is contrary to the recognized standards or ethics of the acupuncture profession or that may constitute a danger to the health, welfare or safety of the patient or the public.
  - (m) Any conduct or condition that may impair the ability to safely and skillfully practice acupuncture.
  - (n) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of or conspiring to violate this chapter or board rules.
  - (o) Advertising in a false, deceptive or misleading manner.
  - (p) Failing or refusing to maintain adequate patient health records or failing or refusing to make health records promptly available to the patient or to another health practitioner or provider on request and receipt of proper authorization.

- (q) Deriving direct or indirect compensation from the referral of a patient without disclosing to the patient in writing the extent of the compensation.
- (r) Deriving a financial interest in products the acupuncturist endorses or recommends to the patient without disclosing to the patient in writing the extent of the financial interest.
- (s) Sexual intimacies with a patient in the practice of acupuncture.
- (t) Failing to appropriately exercise control over or supervise an acupuncture student employed by or assigned to the practitioner in the practice of acupuncture.
- (u) Failing to furnish information in a timely manner to the board or its investigators or representatives if the information is legally requested by the board.
- (v) Supervising or engaging in a clinical training program in acupuncture without being approved and registered by the board for that program.
- (w) Knowingly making a false, fraudulent or misleading statement, written or oral, to the board.
- (x) Failing to exercise proper care for a patient by abandoning or neglecting a patient in need of immediate care without making reasonable arrangements for the continuation of care or by failing to refer the patient to another appropriate health care provider when necessary.
- (y) Failing to use needles that have been sterilized according to clean needle technique principles approved by the board.

### 32-3903. Powers and duties of the board

#### A. The board shall:

1. Adopt rules necessary to enforce this chapter.
2. Initiate investigations and take disciplinary actions to enforce this chapter.
3. Evaluate the qualifications of applicants and issue licenses to qualified applicants.
4. Adopt and use a seal to authenticate official board documents.
5. Establish fees pursuant to section 32-3927.
6. Adopt rules for clinical training.

#### B. The board may:

1. Subject to title 41, chapter 4, article 4, employ personnel needed to carry out board functions.
2. Purchase, lease, rent, sell or otherwise dispose of personal and real property for the operations of the board.
3. Approve examinations for licensure.

32-3922. Auricular acupuncture for chemical dependency; certificate; requirements; fingerprints; definition

A. The board may issue an auricular acupuncture certificate to a person who practices auricular acupuncture for the purpose of treating alcoholism, substance abuse or chemical dependency if the person does all of the following:

1. Provides documentation of successful completion of a board-approved training program in acupuncture for the treatment of alcoholism, substance abuse or chemical dependency that meets or exceeds standards of training established by the national acupuncture detoxification association or a board-approved group.
2. Provides documentation satisfactory to the board of successfully completing a board-approved clean needle technique course.
3. Submits an application as prescribed by the board and a fee prescribed by section 32-3927.
4. Beginning January 1, 2019, submits a full set of fingerprints to the board 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.
5. Discloses in an application for initial certification or recertification all other active and past professional health care licenses and certificates issued to the applicant in this state or by another state, district or territory of the United States.

B. A certificate issued pursuant to this section allows the certificate holder to practice auricular acupuncture in a substance abuse or chemical dependency program approved by the board, this state or the federal government under the supervision of a person licensed pursuant to this chapter.

C. A certificate issued pursuant to this section is valid for one year. The certificate may be renewed by the board if the certificate holder submits an application as prescribed by the board and a fee prescribed by section 32-3927 before the certificate expires.

D. For the purposes of this section, "auricular acupuncture" means the application of acupuncture needles to the pinna, lobe or auditory meatus to treat alcoholism, substance abuse or chemical dependency.

### 32-3924. Qualifications for licensure

To receive a license to practice acupuncture pursuant to this chapter, a person shall submit an application as prescribed by the board. The applicant shall disclose in an application for initial licensure all other active and past professional health care licenses and certificates issued to the applicant in this state or by another state, district or territory of the United States. The application shall document to the board's satisfaction that the applicant has successfully completed a clean needle technique course approved by the board and meets all of the following:

1. Has either:

(a) Been certified in acupuncture by the national certification commission for acupuncture and oriental medicine, or its successor organization, or another certifying body or examination that is recognized by the board.

(b) Passed the point location module, foundations of oriental medicine module, biomedicine module and acupuncture module offered by the national certification commission for acupuncture and oriental medicine.

(c) Been licensed by another state with substantially similar standards, and has not had certification or licensure revoked.

2. Has graduated from or completed training in a board-approved program of acupuncture with a minimum of one thousand eight hundred fifty hours of training that includes at least eight hundred hours of board-approved clinical training.

3. Beginning July 1, 2016, has submitted a full set of fingerprints to the board 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.

32-3925. Renewal of license; continuing education

- A. Except as provided in section 32-4301, a license issued pursuant to this chapter is subject to renewal each year and expires unless renewed.
- B. The executive director shall send a renewal application to each licensee at least sixty days before expiration of the license.
- C. A licensee shall include with the application for renewal documentation satisfactory to the board that the licensee has successfully completed at least fifteen hours of board approved continuing education each year.
- D. On compliance with board requirements for the renewal of licenses, the board may reinstate a license canceled for failure to renew.

### 32-3926. Visiting professor certificate

A. The board may issue a visiting professor certificate to an acupuncturist who has received a teaching position in a school of acupuncture in this state if that person demonstrates to the satisfaction of the board that the person has at least five years' experience in the practice of acupuncture and has adequate skill and training. The acupuncturist shall submit an application as prescribed by the board and shall submit the fee prescribed pursuant to section 32-3927.

B. A certificate issued pursuant to this section allows the certificate holder to practice acupuncture only in relation to the certificate holder's faculty position duties.

C. A certificate issued pursuant to this section is valid for one year. The board may grant a one year extension if the certificate holder submits an application at least thirty days before the certificate expires. The board may grant a total of two one-year extensions.

**32-3927. Fees**

A. By a formal vote at its annual meeting the board shall establish nonrefundable fees that do not exceed the following:

1. For issuance of an initial license, six hundred dollars.
2. For an application for a license or certificate, one hundred fifty dollars.
3. For renewal of a license, six hundred dollars.
4. For late renewal of a license, an additional one hundred dollars.
5. For issuance of a duplicate license or certificate, fifty dollars.
6. For issuance of an initial visiting professor certificate, six hundred dollars.
7. For renewal of a visiting professor certificate, six hundred dollars.
8. For issuance of an initial auricular acupuncture certificate, two hundred fifty dollars.
9. For renewal of an auricular acupuncture certificate, two hundred fifty dollars.
10. For copying records, documents, letters, minutes, applications and files, twenty-five cents a page.
11. For a copy of the minutes to board meetings during the current calendar year, twenty-five dollars for each set of minutes.

B. The board shall charge additional fees for services not required to be provided by this chapter but that the board determines are necessary and appropriate to carry out this chapter. The fees shall not exceed the actual cost of providing these services.

32-3951. Denial, revocation or suspension of license; hearings; alternative sanctions

A. The board may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Conviction of a felony or a misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.

2. Securing a license under this chapter through fraud or deceit.

3. Unprofessional conduct or incompetence in the conduct of the licensee's practice.

4. Using a false name or alias in the practice of the licensee's profession.

5. Violating this chapter or board rules.

B. If the board determines pursuant to a hearing that grounds exist to revoke or suspend a license, the board may do so permanently or for a fixed period of time and may impose conditions prescribed by the board. The board may also impose a civil penalty of not more than ten thousand dollars for each violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this subsection in the state general fund.

C. The board may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The board shall conduct any hearing to revoke or suspend a license pursuant to title 41, chapter 6, article 10. Any person appearing before the board may be represented by an attorney.

E. Instead of denying, revoking or suspending a license the board may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee. The board may also 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.

F. The board shall promptly notify a licensee's employer if the director initiates a disciplinary action against the licensee.

G. The board may appoint an investigator to provide information to the board concerning an alleged violation of this chapter.

H. The board on its own initiative or on application of any person involved in an investigation or proceeding conducted by the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents, reports, records or any other evidence relating to a board investigation or proceeding.

### 32-3952. Right to examine and copy evidence

In connection with a board investigation conducted pursuant to 32-3951, the board at all reasonable times has the right to examine and copy any documents, reports, records or other physical evidence of any person being investigated or reports, records and any other documents maintained by and in the possession of any clinic, licensee's office or other public or private agency and any health care institution as defined in section 36-401 if the board believes this information is related to unprofessional conduct or the mental or physical ability of a licensee to practice acupuncture.

#### 41-1023. Public participation; written statements; oral proceedings

- A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.
- B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.
- C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.
- D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.
- E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.
- F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
  3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.
- I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.
- J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.
- K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.
- L. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.
- M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

#### 41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
8. If applicable, that the agency completed the previous five-year review process.
9. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the

council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

### 41-1056.01. Impact statements; appeals

A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on any of the following grounds:

1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.
2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
3. The agency did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

B. The burden of proof is on the petitioner to show that any of the provisions set forth in subsection A of this section are met.

C. Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rule making or to amend or repeal the rule. The agency shall initiate any such rule making within forty-five days after publication of its final decision.

D. Any person who is or may be affected by the agency's final decision on whether to initiate a rule making pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.

E. The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.

F. If the appeal is placed on the council's agenda, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.

G. The council shall require an agency to promptly initiate a rule making or to amend or repeal the rule or the rule package, as prescribed by section 41-1024, subsection E, objected to in the petition if the council finds that any of the provisions set forth in subsection A of this section are met.

H. This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.

## 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.

### 41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

- A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
- B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.
- C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

#### 41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

#### 41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty.

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

**BOARD OF DENTAL EXAMINERS**

Title 4, Chapter 11, Articles 1-4



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 20, 2021

**SUBJECT: BOARD OF DENTAL EXAMINERS**  
Title 4, Chapter 11, Articles 1-4

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### Summary

This Five-Year Review Report (5YRR) from the Board of Dental Examiners (Board) relates to all rules in Title 4, Chapter 11, Articles 1-4 regarding the licensure of dental examiners. Specifically, the Articles under review relate to the following:

- Article 1: Definitions
- Article 2: Licensure by Credential
- Article 3: Examinations, Licensing Qualifications, Application and Renewal, Timeframes
- Article 4: Fees.

In the previous 5YRR for Article 1, approved by the Council in November 2016, the Board indicated that unnecessary definitions could be removed for: nonsurgical periodontal treatment, patient of record, periodontal examination and assessment, and public member. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

In the previous 5YRR for Article 2, approved by the Council in November 2016, the Board indicated for some rules that some portions of the rules were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

The previous 5YRR for Article 3 was originally due in 2016, but was rescheduled to 2021 and is included in the current report.

In the previous 5YRR for Article 4, approved by the Council in November 2016, the Board indicated that internal references in Sections R4-11-402 and 406 needed to be updated and the title for R4-11-405 needed to be changed from “Other Fees” to “Charges for Board Services.” The Board indicates that these changes were completed in a 2017 rulemaking.

### **Proposed Action**

In the current report, as outlined above, the Board intends to amend rules in Articles 1 and 2 by completing a rulemaking by December 2021. Additionally, the Board indicates that HB2235, which passed through legislation and was signed into law on May 16, 2018, created a new mid-level dental profession in Arizona known as Dental Therapy that includes requirements to obtain and maintain a license for Dental Therapy services such as educational requirements, experience requirements, continuing education requirements, etc. The Board indicates it has received approval from the Governor's office to proceed with rulemaking to update its rules to account for this new dental profession and the corresponding statutory requirements. The Board indicates it is currently working on updating its rules to address Dental Therapy.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board estimates that the economic impact of the reviewed rules is minimal. According to the Board, the main costs of the rulemaking are incurred by the Board and include staff time to process new and renewal applications. Establishing standards of practice is also beneficial to society.

The Board currently licenses approximately 5,464 dentists, 5,124 dental hygienists, 356 business entities, 14 dental consultants, zero restricted permits, and 12 denturists, totaling approximately 10,614 dental professionals and 356 business entities. The economic impact has not differed from that projected when the rules were amended effected November 8, 2003, January 5, 2014, April 3, 2016, and February 6, 2017.

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

The Board indicates the rules impose the least burden and probable costs to regulated persons, which are outweighed by the probable benefits of the rules. After follow-up from Council staff, the Board further indicates that the rules simply clarify how licensees can meet the statutory requirements to obtain and maintain various dental licenses. As such, the Board does not believe the rules impose any additional requirements on licensees, and therefore, the rules are the least burdensome to ensure dental professionals are meeting the statutory requirements to practice safely in Arizona. The Board also indicates it regularly reviews its rules and makes appropriate changes when necessary to ensure that they remain the least burdensome, but still ensure licensees are meeting statutory requirements to practice safely. Thus, the Board maintains the benefits of the rules outweigh the costs to licensees to become licensed and maintain that license.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates that the rules are clear, concise and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board indicates that the rules are generally consistent with other rules and statutes with the exception of the following rules, which must be updated to account for statutory changes relating to the regulation of Dental Therapy in Arizona, as outlined above: R4-11-301, 303, 401, 403

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates that the rules are effective in achieving their regulatory objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board indicates that the rules are currently enforced as written.

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

Not applicable. The Board indicates that there is no corresponding federal law.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037, if a rule requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

Here, the Board indicates the licenses issued under these rules are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature. As such, Council staff believes the Board is in compliance with A.R.S. § 41-1037.

**11. Conclusion**

This 5YRR from the Board relates to all rules in Title 4, Chapter 11, Articles 1-4 regarding the licensure of dental examiners. The Board indicates the rules are clear, concise, understandable, effective, and enforced as written.

The Board indicates that the rules are generally consistent with other rules and statutes except that some rules must be updated to be consistent with recent 2018 statutory changes which created a new mid-level dental profession in Arizona known as Dental Therapy that includes requirements to obtain and maintain a license for Dental Therapy services such as educational requirements, experience requirements, continuing education requirements, etc. The Board indicates it has received approval from the Governor's office to proceed with rulemaking to update its rules to account for this new dental profession and the corresponding statutory requirements. The Board indicates it is currently working on updating its rules to address Dental Therapy.

The Board also intends to amend rules in Article 1 to remove unnecessary definitions and amend rules in Article 2 to remove portions of the rules that are duplicative. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

Council staff recommends approval of this report.



Douglas A. Ducey,  
Governor

# Arizona State Board of Dental Examiners

“Caring for the Public’s Dental  
Health and Professional Standards”

1740 West Adams Street, Suite 2470

Phoenix, Arizona 85007

P: (602)242-1492

E: [info@dentalboard.az.gov](mailto:info@dentalboard.az.gov)

W: <https://dentalboard.az.gov>

June 21, 2021

Nicole Sornsin, Chair  
Governor’s Regulatory Review Council  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Ave., Ste. 402  
Phoenix, AZ 85007

**RE: Five-year-review Report for 4 A.A.C. 11, Articles 1, 2, 3, and 4**

In compliance with A.R.S. § 41-1056(A), the Arizona State Board of Dental Examiners (Board) has reviewed all of the rules in A.A.C. Title 4, Chapter 1, Articles 1, 2, 3, and 4 and submits the enclosed report to the Council for approval. The Board certifies that it is in compliance with A.R.S. § 41-1091. The Board contact person for this report is Ryan Edmonson, Executive Director, who may be reached at (602) 542-4493.

Sincerely,

Ryan P. Edmonson  
Executive Director  
Arizona State Board of Dental Examiners

Enclosures: Five-Year Rule Review  
Five-Year Rule Review Summary Table  
Board’s Current Statutes and Rules

**Arizona State Board of Dental Examiners**

4 A.A.C. 11, Articles 1, 2, 3, and 4

May 2021

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## **INTRODUCTION**

The Arizona Board of Dental Examiners protects the health, safety and welfare of the citizens of Arizona by regulating the practice of dentistry. The rule in 4 A.A.C. 11, Article 1, provides definitions that are used throughout the rules. The rules in 4 A.A.C. 11, Article 2, provides various licensing application requirements. The rules in 4 A.A.C. 11, Article 3, provides various application processing procedures. The rules in 4 A.A.C. 11, Article 4, provides various fees.

## **INFORMATION THAT IS IDENTICAL FOR ALL RULES**

1. **Effectiveness in Achieving Objectives**  
All the rules reviewed are effective in achieving their stated objectives.
2. **Written Criticisms of the Rules Received in the Past Five Years**  
The agency has not received any written criticisms of the rules in the past five years.
3. **Authorization of the Rules by Existing Statutes**  
The agency's general rulemaking authority is found in A.R.S. §§ 32-1201(21)(C), (t), and (u), and 32-1207(A) (1) and (B) (3).
4. **Consistency with Statutes and Other Rules Made by the Agency**  
The rules reviewed are consistent with the statutes for the agency, namely A.R.S. Title 32, Chapter 18. In addition, the rules are consistent both internally and with relation to the agency's other rules, with the exception of R4-11-301, R4-11-303, R4-11-401, and R4-11-403 whose consistency is addressed individually below.
- 4a. **Enforcement**  
The rules are enforced as written without incident.

5. **Clarity, Conciseness, and Understandability of the Rules**

The agency has analyzed the rules and has found the rules to be clear, concise, and understandable.

6. **Economic, Small Business, and Consumer Impact Comparison**

The economic impact has not differed from that projected when the rules were amended effective November 8, 2003 (9 A.A.R. 4126), January 5, 2014 (19 A.A.R. 3873), April 3, 2016 (22 A.A.R. 371), and February 6, 2017 (22 A.A.R. 3697).

The main costs are born by the agency and include staff time to process new and renewal applications. The Board currently licenses approximately 5,464 dentists, 5,124 dental hygienists, 356 business entities, 14 dental consultants, zero restricted permits, and 12 denturists, totaling approximately 10,614 dental professionals and 356 business entities compared to approximately 8,700 dental professionals and 300 business entities as reported during the Board's last 5-year rule review of Articles 1, 2, and 4, in 2016. Our analysis indicates that establishing standards of practice is beneficial to society. Our statutes and rules exist to protect the public health. These administrative mandates become the standard of practice within the profession. Relying on a single standard promotes consistency of service and improvement of outcomes as well as negating the confusion that comes from either too many or nonexistent standards. Therefore, we estimate the economic impact of the reviewed rules is minimal.

7. **Analysis Submitted by Another Person Regarding the Rules' Impact on this State's Business Competitiveness as Compared to the Competitiveness of Businesses in Other States**

No analysis was submitted to the agency.

9. **Probable Benefits Outweigh Probable Costs / Rules Impose Least Burden on Regulated Persons**

The rules impose the least burden and probable costs to regulated persons, which are outweighed by the probable benefits of the rules.

10. **Stringency Compared with Corresponding Federal Law**

These rules do not have corresponding federal law.

**INDIVIDUAL ANALYSIS**

**R4-11-101. Definitions**

Objective

The objective of the rule is to define terms used in the rules.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1207(A)(1).

8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR, the Board indicated that unnecessary definitions could be removed for: nonsurgical periodontal treatment, patient of record, periodontal examination and assessment, and public member. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
This rule does not issue a regulatory permit.
12. Proposed Course of Action  
The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

#### **R4-11-201. Clinical Examination; Requirements**

##### Objective

The objective of the rule is to specify the examination requirement for a dentist or dental hygienist who wishes to apply for licensure by credential in Arizona.

3. Authorization of the Rules by Existing Statute  
The agency’s specific rulemaking authority is found in A.R.S. §§ 32-1240(A) and 32-1292.01(A).
8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR, the Board indicated that some portions of this rule were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.
12. Proposed Course of Action  
The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

## **R4-11-202. Dental Licensure by Credential; Application**

### Objective

The objective of this rule is to specify the information an applicant for licensure by credential as a dentist is required to submit to the Board.

3. Authorization of the Rules by Existing Statute  
The agency's specific rulemaking authority is found in A.R.S. § 32-1240.
8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR, the Board indicated that some portions of this rule were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.
12. Proposed Course of Action  
The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

## **R4-11-203. Dental Hygienist Licensure by Credential; Application**

### Objective

The objective of this rule is to specify the information an applicant for licensure by credential as a dental hygienist is required to submit to the Board.

3. Authorization of the Rules by Existing Statute  
The agency's specific rulemaking authority is found in A.R.S. § 32-1292.01.
8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR, the Board indicated that some portions of this rule were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

12. Proposed Course of Action

The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

**R4-11-204. Dental Assistant Radiology Certification by Credential**

Objective

The objective of this rule is to specify the prerequisite qualification for a dental assistant to be certified by credential to take dental radiographs.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1292.01.

8. Completion of the Previous Five-Year –Review Report Process

No course of action was proposed in the previous 5YRR.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

12. Proposed Course of Action

The Board is not proposing any course of action at this time.

**R4-11-205. Application for Dental Assistant Radiography Certification by Credential**

Objective

The objective of this rule is to specify the information a dental assistant for a radiography certification by credential is required to submit to the Board.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1292.01.

8. Completion of the Previous Five-Year –Review Report Process

No course of action was proposed in the previous 5YRR.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

12. Proposed Course of Action

The Board is not proposing any course of action at this time.

**R4-11-301. Application**

Objective

The objective of this rule is to specify the documentation that is required to submit an application for licensure.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1285.

4. Consistency with Statutes and Other Rules Made by the Agency

This rule needs to be updated to account for statutory changes relating to the regulation of Dental Therapy in Arizona.

8. Completion of the Previous Five-Year –Review Report Process

The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.

11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.

The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

12. Proposed Course of Action

The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.

**R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits**

Objective

The objective of the rule is to specify the procedures for processing various license applications.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. §§ 32-1213, 32-1232 through 1234, 32-1236 through 1238, 32-1284 through 1285, 32-1287, 32-1296, 32-1297.01, 32-1298, 32-1299.22, and 32-1299.23.

4. Consistency with Statutes and Other Rules Made by the Agency  
This rule needs to be updated to account for statutory changes relating to the regulation of Dental Therapy in Arizona.
8. Completion of the Previous Five-Year –Review Report Process  
The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.
12. Proposed Course of Action  
The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.

#### **R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential**

##### Objective

The objective of the rule is to specify processing procedures for Dental Assistant Radiography Certification by credential.

3. Authorization of the Rules by Existing Statute  
The agency’s specific rulemaking authority is found in A.R.S. §§ 32-1291.01, 32-1292, and 32-1292.01.
8. Completion of the Previous Five-Year –Review Report Process  
The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.
12. Proposed Course of Action  
The Board is not proposing any course of action at this time.

#### **R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA**

### Objective

The objective of the rule is to specify processing procedures for various anesthesia and sedation permits.

3. Authorization of the Rules by Existing Statute  
The agency's specific rulemaking authority is found in A.R.S. § 32-1207.
8. Completion of the Previous Five-Year –Review Report Process  
The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
The license issued under this rule is a general permit consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.
12. Proposed Course of Action  
The Board is not proposing any course of action at this time.

### **R4-11-401. Retired or Disabled Licensure Renewal Fee**

#### Objective

The objective of the rule is to specify the fees the Board charges for renewal of a dentist or dental hygienist license when the licensee is retired or disabled.

3. Authorization of the Rules by Existing Statute  
The agency's specific rulemaking authority is found in A.R.S. § 32-1207(B)(3)(c).
4. Consistency with Statutes and Other Rules Made by the Agency  
This rule needs to be updated to account for statutory changes relating to the regulation of Dental Therapy in Arizona.
8. Completion of the Previous Five-Year –Review Report Process  
No course of action was proposed in the previous 5YRR.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
This rule does not issue a regulatory permit.
12. Proposed Course of Action  
The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.

### **R4-11-402. Business Entity Fees**

### Objective

The objective of the rule is to specify the fee the Board charges for registration of a business entity.

3. Authorization of the Rules by Existing Statute  
The agency's specific rulemaking authority is found in A.R.S. 32- § 1213(B)(4).
8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR the Board indicated that the internal references in this section needed to be updated. The Board completed this course of action in 2017.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
This rule does not issue a regulatory permit.
12. Proposed Course of Action  
The Board is not proposing any course of action at this time.

### **R4-11-403. Licensing Fees**

### Objective

The objective of the rule is to specify various licensing fees.

3. Authorization of the rules by existing statute  
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1232(B), 32-1236(D), 32-1240(B), 32-1284(A), 32-1287(D), 32-1292.01(B), and 32-1297.06(D).
4. Consistency with Statutes and Other Rules Made by the Agency  
This rule needs to be updated to account for statutory changes relating to the regulation of Dental Therapy in Arizona.
8. Completion of the Previous Five-Year –Review Report Process  
This rule was adopted in 2017, so no course of action was proposed in the previous 5YRR.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
This rule does not issue a regulatory permit.
12. Proposed Course of Action  
The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.

#### **R4-11-405. Charges for Board Services**

##### Objective

The objective of the rule is to specify the Board's charges for various services it provides to applicants, licensees, and members of the public.

3. Authorization of the rules by existing statute  
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1207(F), 32-1236(F), 32-1262(G), 32-1297.04, and 32-1297.06(F).
8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR, the Board proposed to change the title of this rule from "Other Fees" to "Charges for Board Services" and the Board completed this change in 2017.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
This rule does not issue a regulatory permit.
12. Proposed Course of Action  
The Board is not proposing any course of action at this time.

#### **R4-11-406. Anesthesia and Sedation Permit Fees**

##### Objective

The objective of the rule is to specify the fee the Board charges for issuance of an anesthesia and sedation permit.

3. Authorization of the rules by existing statute  
The agency's specific rulemaking authority is found in A.R.S. § 32-1207(E).
8. Completion of the Previous Five-Year –Review Report Process  
In the previous 5YRR the Board indicated that the internal references in this section needed to be updated. The Board completed this course of action in 2017.
11. For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.  
This rule does not issue a regulatory permit.
12. Proposed Course of Action  
The Board is not proposing any course of action at this time.

**ARIZONA STATE BOARD OF DENTAL EXAMINERS**

2020 Five-Year Review, Title 4, Chapter 11

**Articles 1, 2, 3, and 4**

<b>Rule No.</b>	<b>Title</b>	<b>Last Revision</b>	<b>Eff.</b>	<b>Enf.</b>	<b>Consist.</b>	<b>Clear/Concise/ understandable</b>	<b>Probable benefits/ Least Burden</b>	<b>ARS Authority</b>	<b>EIS Comp.</b>	<b>Previous and Current Proposed Course of Action</b>
R4-11-101	Definitions	January 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(1)	The Board currently licenses approx. 5,464 dentists, approx. 5,124 dental hygienists, approx. 14 dental consultants and approx. 12 denturists and registers approx. 356 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,261,200 during the last budget year. There is no change from the economic impact the Board anticipated in the previous rulemaking.	In the previous 5YRR, the Board indicated that unnecessary definitions could be removed for: nonsurgical periodontal treatment, patient of record, periodontal examination and assessment, and public member. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.

R4-11-201	Clinical Examination; Requirements	April 3, 2016	Y	Y	Y	Y	Y	A.R.S. §§ 32-1240(A) and 32-1292.01(A)	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	In the previous 5YRR, the Board indicated that some portions of this rule were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.
R4-11-202	Dental Licensure by Credential; Application	April 3, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1240	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated	In the previous 5YRR, the Board indicated that some portions of this rule were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make

									\$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	substantive changes to this section and intends to complete the rulemaking by December 2021.
R4-11-203	Dental Hygienist Licensure by Credential; Application	April 3, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1292.01	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	In the previous 5YRR, the Board indicated that some portions of this rule were duplicative and could be removed. The Board indicated that these changes were not substantive and proposed to make these changes at a future date whenever it made substantive changes to this section. The Board is currently engaged in the rulemaking process to make substantive changes to this section and intends to complete the rulemaking by December 2021.
R4-11-204	Dental Assistant Radiology Certification by Credential	April 3, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1292.01	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants,	No course of action was proposed in the previous 5YRR.

									certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	The Board is not proposing any course of action at this time.
R4-11-205	Application for Dental Assistant Radiography Certification by Credential	November 8, 2003	Y	Y	Y	Y	Y	A.R.S. § 32-1292.01	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the	No course of action was proposed in the previous 5YRR.  The Board is not proposing any course of action at this time.

									previous rulemaking	
R4-11-301	Application	April 3, 2016	Y	Y	N	Y	Y	A.R.S. § 32-1285	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.  The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.
R4-11-303	Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing	April 3, 2016	Y	Y	N	Y	Y	A.R.S. §§ 32-1213, 1232, 1233, 1234, 1236, 1237, 1238, 1284, 1285, 1287, 1296, 1297.01, 1298, 1299.22, 1299.23,	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.  The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.

	Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits									
R4-11-304	Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential	April 3, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1291.01, 1292, 1292.01	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.  The Board is not proposing any course of action at this time.
R4-11-305	Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation	April 3, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1207	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.	The previous 5YRR that was scheduled for 2016 was rescheduled to 2021.  The Board is not proposing any course of action at this time.

	Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA									
R4-11-401	Retired or Disabled Licensure Renewal Fee	February 6, 2017	Y	Y	N	Y	Y	A.R.S. § 32-1207(B)(3)(c)	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	No course of action was proposed in the previous 5YRR.  The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.
R4-11-402	Business Entity Fees	February 6, 2017	Y	Y	Y	Y	Y	A.R.S. § 32-1213(B)(4)	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants,	In the previous 5YRR the Board indicated that the internal references in this section needed to be updated. The Board

									certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	completed this course of action in 2017.  The Board is not proposing any course of action at this time.
R4-11-403	Licensing Fees	February 6, 2017	Y	Y	N	Y	Y	A.R.S. § 32-1232(B), 32-1984(A), 32-1240(B), 32-1292.01(B), 32-1236(D), 32-1287(D), 32-1297.06(D)	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the	This rule was adopted in 2017, so no course of action was proposed in the previous 5YRR.  The Board is currently engaged in the rulemaking process to update this rule to account for statutory changes relating to dental therapists and intends to complete the rulemaking by December 2021.

									previous rulemaking	
R4-11-405	Charges for Board Services	February 6, 2017	Y	Y	Y	Y	Y	A.R.S. §§ 32-1207(F), 32-1236(F), 32-1262(G), 32-1297.04, and 32-1297.06(F)	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	In the previous 5YRR, the Board proposed to change the title of this rule from “Other Fees” to “Charges for Board Services” and the Board completed this change in 2017.  The Board is not proposing any course of action at this time.
R4-11-406	Anesthesia and Sedation Permit Fees	February 6, 2017	Y	Y	Y	Y	Y	A.R.S. § 32-1207(E)	The Board currently licenses 4,463 dentists, 4,288 dental hygienists, and 14 dental consultants, certifies 12 denturists, and registers 337 business entities. The Board is authorized to have	In the previous 5YRR the Board indicated that the internal references in this section needed to be updated. The Board completed this course of action in 2017.  The Board is not proposing any course of action at this time.

									11 FTEs and was appropriated \$1,215,100 during the last year. There is no change from the economic impact the Board anticipated in the previous rulemaking	
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# **Arizona State Board of Dental Examiners**

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# ARIZONA REVISED STATUTES

## Dentistry – Chapter 11

### Article 1 – Dental Board

#### 32-1201. [Definitions](#)

In this chapter, unless the context otherwise requires:

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



11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

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

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

(a) Charges for services not rendered.

(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

(e) Any statement that is material to the claim and that the licensee knows is false or misleading.

(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

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



16. "Licensed" means licensed pursuant to this chapter.
17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.
18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.
19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.
20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.
21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.
22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.
23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.
24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

#### 32-1201.01. [Definition of unprofessional conduct](#)

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.
2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.



3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.
4. Committing gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.
13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.
14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or willfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Committing repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.



18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. Committing the following advertising practices:
  - (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
  - (b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:
  - (a) Professionally incompetent.
  - (b) Engaging in unprofessional conduct.
  - (c) Impaired by drugs or alcohol.
  - (d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.
29. Filing a false report pursuant to paragraph 28 of this section.



30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

#### 32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues, including the removal of stains, discolorations and concretions.

#### 32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.

D. A board member shall not serve more than two consecutive terms.

E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

#### 32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

#### 32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this



subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

### 32-1206. Compensation of board

Members of the board are entitled to receive compensation in the amount of two hundred fifty dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

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

A. The board shall:

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

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

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

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

2. Adopt a seal.

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

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

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



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

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

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

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

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

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

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.



2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

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

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

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

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

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

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

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



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

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

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

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

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

#### 32-1208. [Failure to respond to subpoena; civil penalty](#)

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

#### 32-1209. [Admissibility of records in evidence](#)

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

#### 32-1210. [Annual report](#)

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.
2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.



6. A full and complete statement of financial transactions of the board.
  7. Any other matters that the board wishes to include in the report or that the governor requires.
- B. On request of the governor the board shall submit a supplemental report.

**32-1212. Dental board fund**

- A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.
- B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.
- C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

**32-1213. Business entities; registration; renewal; civil penalty; exceptions**

- A. A business entity may not offer dental services pursuant to this chapter unless:
1. The entity is registered with the board pursuant to this section.
  2. The services are conducted by a licensee pursuant to this chapter.
- B. The business entity must file a registration application on a form provided by the board. The application must include:
1. A description of the entity's services offered to the public.
  2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
  3. The names and addresses of the officers and directors of the business entity.
  4. A registration fee prescribed by the board in rule.
- C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
- D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
- E. The business entity must notify the board in writing within thirty days after any change:



1. In the entity's name, address or telephone number.
2. In the officers or directors of the business entity.
3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
2. Disposing of unclaimed dental records.
3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.
2. Suspend or revoke a registration.
3. Impose a civil penalty of not more than two thousand dollars for each violation.
4. Enter a decree of censure.
5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.
6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

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

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.
2. Any of the following entities licensed under title 20:



- (a) A service corporation.
  - (b) An insurer authorized to transact disability insurance.
  - (c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
  - (d) A health care services organization that does not provide directly for dental services.
3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29, chapter 4, article 11.
4. A facility regulated by the federal government or a state, district or territory of the United States.
5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year from the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.
- K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
- 1. Owned by a dentist who is licensed pursuant to this chapter.
  - 2. Regulated by the federal government or a state, district or territory of the United States.
- L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:
- 1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.
  - 2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.
- M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.
- N. No individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year from the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty per cent.



## Article 2 – Licensure

### 32-1231. [Persons not required to be licensed](#)

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.
2. A person, whether or not licensed by this state, from practicing dental therapy either:
  - (a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.
  - (b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.
3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.
4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.
5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.
6. The state director of dental public health from performing the director's administrative duties as prescribed by law.
7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.
8. A dentist, dental therapist or dental hygienist who is not practicing on the public at large from practicing in a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

### 32-1232. [Qualifications of applicant; application; fee; fingerprint clearance card](#)

- A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.



B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

### 32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.
2. The western regional examining board examination or a clinical examination administered by another state or regional testing agency in the United States within five years preceding filing the application.
3. The Arizona dental jurisprudence examination.

### 32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:



1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia, but is not currently licensed to practice dentistry in Arizona.

2. Is of good moral character.

3. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Meets the applicable requirements of section 32-1232.

7. Meets the requirements of section 32-1233, paragraphs 1 and 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

8. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section shall not be deemed to require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

[32-1235. Reinstatement of license or certificate; application for previously denied license or certificate](#)

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or



revoked by the board or surrendered by the applicant 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 suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, 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 may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

[32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled licensees; penalties](#)

A. Except as provided in section 32-4301, a license expires on June 30 of every third year. On or before June 30 of every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than six hundred fifty dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a licensee in disabled or retired status.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year



immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days of opening the additional place or places of practice. The board shall impose a penalty of fifty dollars for failure to notify the board.

G. A licensee who is fully retired and a licensee who is permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.
2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.
3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase



the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.

### 32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.
2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.
3. Has been actively engaged in one or more of the following for three years immediately preceding the application:
  - (a) The practice of dentistry.
  - (b) An approved dental residency training program.
  - (c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.
4. Is competent and proficient to practice dentistry.
5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

### 32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

### 32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:
  - (a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit



will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

**32-1240. Licensure by credential; examinations; waiver; fee**

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

**32-1241. Training permits; qualified military health professionals**

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not 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.



5. Is not 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.

6. Has not 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 request for a training permit of a qualified military health professional 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 qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

## **Article 3 – Regulation**

### **32-1261. Practicing without license; classification**

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.
2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.
3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

### **32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee**

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.



C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

### **32-1263. Grounds for disciplinary action; definition**

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.
2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.
3. Physical or mental incompetence to practice pursuant to this chapter.
4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.
5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.



D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

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

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.



13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also 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.



C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. 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.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

**32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions**

A. The board on its motion, or the executive director if delegated by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.
2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or its designees shall conduct necessary investigations, including interviews between representatives of the board and the licensee with respect to any information obtained by or filed with the board under subsection A of this section. The results of the investigation conducted by a designee shall be forwarded to the board for its review.



D. If, based on the information it receives under subsection A of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of the respondent's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

E. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is insufficient to merit disciplinary action against the licensee, the board may take any of the following actions:

1. Dismiss the complaint.
2. Issue a nondisciplinary letter of concern to the licensee.
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.
4. Assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars if the complaint involves the licensee's failure to respond to a board subpoena.

G. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is sufficient to merit disciplinary action against the licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

H. If, after completing a formal interview, the board finds that the information provided under subsection A of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.

I. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.



J. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

K. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

L. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

M. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

N. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

O. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

P. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.
2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

Q. A licensee who files a complaint pursuant to subsection P of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

R. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection P of this section.



S. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.
2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

**32-1263.03. Executive director; complaints; termination; review**

A. If delegated by the board, the executive director, with the concurrence of the board's investigative staff, may terminate a complaint if the investigative staff's review indicates the complaint is without merit and that termination is appropriate.

B. The executive director may not terminate a complaint if a court has entered a medical malpractice judgment against a person licensed under this chapter.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director terminated pursuant to subsection A since the preceding board meeting.

D. A person who is aggrieved by an action taken by the executive director pursuant to subsection A may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is 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.

**32-1264. Maintenance of records**

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.



C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

#### 32-1265. [Interpretation of chapter](#)

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

#### 32-1266. [Prosecution of violations](#)

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

#### 32-1267. [Use of fraudulent instruments; classification](#)

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.



3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

**32-1268. Violations; classification; required proof**

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

**32-1269. Violation; classification; injunctive relief**

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

**32-1270. Deceased or incapacitated dentists; notification**

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.



32-1271. [Marking of dentures for identification; retention and release of information](#)

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

## Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. [Definitions](#)

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.
2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.
3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. [Application for licensure; requirements; fingerprint clearance card; denial or suspension of application](#)

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.
2. Verify under oath that all statements in the application are true to the applicant's knowledge.
3. Enclose with the application:
  - (a) A recent photograph of the applicant.
  - (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.
2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.



3. Successfully passes both of the following:

(a) Within five years before filing the application, a clinical examination that is either:

(i) The western regional examining board examination.

(ii) An examination in dental therapy administered by another state or testing agency that is substantially equivalent to the western regional examining board examination, as determined by the state board of dental examiners.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

[32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired licensees and licensees with a disability](#)



A. Except as provided in section 32-4301, a license issued under this article expires on June 30 of every third year. On or before June 30 of every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30 of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to one hundred dollars if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

[32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions](#)

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.



B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.
2. Perform comprehensive charting of the oral cavity.
3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.
4. Expose and process dental radiographic images.
5. Perform dental prophylaxis, scaling, root planing and polishing procedures.
6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.
7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.
8. Perform pulp vitality testing.
9. Apply desensitizing medicaments or resins.
10. Fabricate athletic mouth guards and soft occlusal guards.
11. Change periodontal dressings.
12. Administer nitrous oxide analgesics and local anesthetics.
13. Perform simple extraction of erupted primary teeth.
14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.
15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.
16. Prepare and place direct restorations in primary and permanent teeth.
17. Fabricate and place single-tooth temporary crowns.
18. Prepare and place preformed crowns on primary teeth.
19. Perform indirect and direct pulp capping on permanent teeth.



20. Perform indirect pulp capping on primary teeth.
21. Perform suturing and suture removal.
22. Provide minor adjustments and repairs on removable prostheses.
23. Place and remove space maintainers.
24. Perform all functions of a dental assistant and expanded function dental assistant.
25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.
26. Provide referrals.
27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.
2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

[32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements](#)

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.
2. A health center program that has received a federal look-alike designation.
3. A community health center.
4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.
5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.



C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

#### 32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.



B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.
2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.
2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

#### 32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

#### 32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.
2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.



B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

[32-1276.08. Dental therapy schools; credit for prior experience or coursework](#)

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

## **Article 4 – Licensing and Regulation of Dental Hygienists**

[32-1281. Practicing as dental hygienist; supervision requirements; definitions](#)

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.
2. Scaling.
3. Closed subgingival curettage.
4. Root planing.
5. Administering local anesthetics and nitrous oxide.
6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.
7. Periodontal screening or assessment.
8. Recording clinical findings.
9. Compiling case histories.
10. Exposing and processing dental radiographs.
11. All functions authorized and deemed appropriate for dental assistants.
12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.



13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents, used in relation to dental hygiene procedures, to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on the use of the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in the administration of local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.



(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for the administration of local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States that maintains a standard of certification that is substantially equivalent to that of this state as determined by the board.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.



3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

#### 32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

#### 32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

#### 32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall be of good moral character, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of one hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.



3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

### 32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination that is completed within five years preceding filing the application and that is either of the following:

(a) The western regional examining board examination.

(b) An examination administered by another state or testing agency that is substantially equivalent to the requirements of this state, as determined by the board.

3. The Arizona dental jurisprudence examination.

### 32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

### 32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled licensees

A. Except as provided in section 32-4301, a license expires on June 30 of every third year. On or before June 30 of every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than three hundred twenty-five dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired or disabled hygienist.



B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires on August 30 of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who is permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

#### 32-1288. Practicing without license: classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

#### 32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.



32-1289.01. [Dental hygienists; affiliated practice relationships; rules; definition](#)

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall include at least the following:

(a) An identification of the affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) An identification of the services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the dental hygienist shall be directed to the affiliated dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months of the initial treatment by the dental hygienist.

4. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.



5. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.
2. A long-term care facility.
3. A public health agency or institution.
4. A public or private school authority.
5. A government-sponsored program.
6. A private nonprofit or charitable organization.
7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated dental hygienist during the business hours of the affiliated practice dental hygienist.
2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the dental hygienist in each affiliated practice setting in which the dental hygienist performs dental hygiene services under the affiliated practice relationship.
3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.
4. Not permit the provision of dental hygiene services by more than three affiliated practice dental hygienists at any one time.

H. Each affiliated dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.
2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated dentist.



3. Is responsible and liable for all services rendered by the dental hygienist under the affiliated practice relationship.

I. The dental hygienist and the affiliated dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental hygienist and the affiliated dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter except for any diagnostic procedures that are required to be performed by a dentist. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement. Procedures identified in section 32-1281, subsection B, paragraphs 4 and 5 are subject to the conditions prescribed in section 32-1281, subsection F.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

### 32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

### 32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.



B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

**32-1291.01. Expanded function dental assistants; training and examination requirements; duties**

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

**32-1292. Restricted permits; suspension; expiration; renewal**

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.



4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.



[32-1292.01. Licensure by credential; examinations; waiver; fee](#)

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.
2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

## **Article 5 – Certification and Regulation of Denturists**

[32-1293. Practicing as denturist; denture technology; dental laboratory technician](#)

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.
2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, relin, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

[32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association](#)

A. A denturist may practice only in the office of a licensed dentist, denominated as such.



B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

### 32-1295. [Board of dental examiners; additional powers and duties](#)

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.
2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.
3. Investigate charges of misconduct on the part of certified denturists.
4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.
2. Hire consultants to assist the board in the performance of its duties.



C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

**32-1296. Qualifications of applicant**

A. To be eligible for certification to practice denture technology an applicant shall:

1. Be of good moral character.
2. Hold a high school diploma or its equivalent.
3. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.
4. Pass a board approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

**32-1297.01. Application for certification; fingerprint clearance card; denial; suspension**

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.
2. Has knowingly made any false statement in the application.
3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.
4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.



C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

#### 32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

#### 32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

#### 32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

#### 32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires on June 30 of every third year. On or before June 30 of every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than three hundred dollars, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a disabled or retired status.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before June 30 of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires on August 30 of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent certifications shall be conducted pursuant to this section.



D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a one hundred dollar penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days of opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a fifty dollar penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a certificate holder fails to notify it of the change within thirty days.

#### 32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. 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.

#### 32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.



3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

#### 32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

## **Article 6 – Dispensing of Drugs and Devices**

#### 32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.



B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

## **Article 7 – Rehabilitation**

[32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement](#)

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and post treatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to 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. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
5. Immediate reporting to the board of the name of a practitioner 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 annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

## **Article 8 – Mobile Dental Facilities and Portable Dental Units**

### **32-1299.21. Definitions**

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

### **32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions**

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:



1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

**32-1299.23. Permit application; fees; renewal; notification of changes**

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

**32-1299.24. Standards of operation and practice**

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.
2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.
3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.
4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.



5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.
6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.
7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.
8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.
9. Maintain a written or electronic record detailing each location where services are provided, including:
  - (a) The street address of the service location.
  - (b) The dates of each session.
  - (c) The number of patients served.
  - (d) The types of dental services provided and the quantity of each service provided.
10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.
11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.
2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

#### **32-1299.25. Informed consent; information for patients**

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital



device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.
2. The name of the dentist or dental hygienist, or both, who provided services.
3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.
4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

#### 32-1299.26. Disciplinary actions: cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.



# ARIZONA ADMINISTRATIVE CODE (Rules)

## Title 4. Professions and Occupations Chapter 11. State Board of Dental Examiners

### ARTICLE 1. DEFINITIONS

#### R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N<sub>2</sub>O) and oxygen (O<sub>2</sub>) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

- Name of sponsoring entity;
- Course title;



Number of credit hours;  
Name of speaker; and  
Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;  
Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;  
Articles other than food intended to affect the structure of any function of the human body; or  
Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate.

Cardiovascular function is maintained. The drugs or techniques used should carry a margin



of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N<sub>2</sub>O/O<sub>2</sub>) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or nondrug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner; Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.



“Public member” means a person who is not a dentist, dental hygienist, dental assistant, dentist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

#### **Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).



#### **R4-11-102. Renumbered**

##### **Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-103. Renumbered**

##### **Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-104. Repealed**

##### **Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-105. Repealed**

##### **Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

## **ARTICLE 2. LICENSURE BY CREDENTIAL**

### **R4-11-201. Clinical Examination; Requirements**

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

##### **Historical Note**

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).



Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-202. Dental Licensure by Credential; Application**

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States; 2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

#### **Historical Note**

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-203. Dental Hygienist Licensure by Credential; Application**

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:



1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under the applicable subsection in R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11- 203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

#### **Historical Note**

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-204. Dental Assistant Radiography Certification by Credential**

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.



#### **Historical Note**

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-205. Application for Dental Assistant Radiography Certification by Credential**

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant's eligibility, and
2. A letter of endorsement that verifies compliance with R4- 11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

#### **Historical Note**

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

#### **R4-11-206. Repealed**

#### **Historical Note**

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-207. Repealed**

#### **Historical Note**

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11- 207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-208. Repealed**

#### **Historical Note**

Former Section R4-11-20 repealed, new Section R4-11- 20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-209. Repealed**

#### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and



amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-210. Repealed**

**Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-211. Repealed**

**Historical Note**

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-212. Repealed**

**Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-213. Repealed**

**Historical Note**

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-214. Repealed**

**Historical Note**

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-215. Repealed**

**Historical Note**

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-216. Repealed**

**Historical Note**

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).



## ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

### R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
  - a. The applicant's dental, dental hygiene, or denturist school, or
  - b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
  - a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
  - b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
  - c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;
5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.

B. The Board may request that an applicant provide:

1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma,



2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
  3. Written verification of the applicant's work history, and
  4. A copy of a high school diploma or equivalent certificate.
- C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

#### **Historical Note**

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-302. Repealed**

#### **Historical Note**

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits**

- A. The Board office shall complete an administrative completeness review within 24 days of the date of receipt of an application for a license, certificate, permit, or registration.
1. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, business entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
  2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
  3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.



E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
  - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
  - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
  - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

#### **Historical Note**

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential**

A. Within 14 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.



- C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.
- D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.
- E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
- F. The notice of denial shall inform the applicant of the following:
1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
  2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
  3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.
- G. The following time-frames apply for certificate applications governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
  2. Substantive review time-frame: 90 calendar days.
  3. Overall time-frame: 114 calendar days.
- H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

#### **Historical Note**

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA**

- A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
1. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
  2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
  3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the



applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:

a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;

b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;

c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and

d. The name and telephone number of an agency contact person who can answer questions regarding the application process.

3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.

4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.

5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.

2. Substantive review time-frame: 120 calendar days.

3. Overall time-frame: 144 calendar days.

#### **Historical Note**

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

## **ARTICLE 4. FEES**

### **R4-11-401. Retired or Disabled Licensure Renewal Fee**

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is \$15.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).



### **R4-11-402. Business Entity Fees**

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services:

1. Initial triennial registration, \$300 per location;
2. Renewal of triennial registration, \$300 per location; and
3. Late triennial registration renewal, \$100 per location in addition to the fee under subsection (2).

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

### **R4-11-403. Licensing Fees**

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: \$510;
2. Dentist prorated initial license fee: \$110;
3. Dental hygienist triennial renewal fee: \$255;
4. Dental hygienist prorated initial license fee: \$55;
5. Denturist triennial renewal fee: \$233; and
6. Denturist prorated initial license fee: \$46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
  - a. Dentists: \$300;
  - b. Dental Hygienists: \$100; and
  - c. Denturists: \$250.
2. Licensure by credential fee:
  - a. Dentists: \$2,000; and
  - b. Dental Hygienists: \$1,000.
3. Penalty to reinstate an expired license or certificate: \$100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
  - a. Failure after 10 days: \$50; and
  - b. Failure after 30 days: \$100.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).



#### **R4-11-404. Repealed**

##### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

#### **R4-11-405. Charges for Board Services**

The Board shall charge the following for the services provided:

1. Duplicate license: \$25;
2. Duplicate certificate: \$25;
3. License verification:
  - a. For licensee: \$25; and
  - b. For non-licensee: \$5;
4. Copy of audio recording: \$10;
5. Photocopies (per page): \$.25;
6. Mailing lists:
  - a. Dentists:
    - i. In-state licensees - paper or labels: \$150;
    - ii. All licensees - paper or labels: \$175; and
    - iii. Mailing list in digital format: \$100;
  - b. Dental hygienists:
    - i. In-state licensees - paper or labels: \$150;
    - ii. All licensees - paper or labels: \$175; and
    - iii. Mailing list in digital format: \$100; and
  - c. Denturists: All certificate holders - paper, labels, or digital format: \$5; and
7. Board meeting agendas and minutes (mailed directly to consumer):
  - a. Agendas and minutes: \$75 for 12 months;
  - b. Agendas only: \$25 for 12 months; and
  - c. Minutes only: \$50 for 12 months.

##### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

#### **R4-11-406. Anesthesia and Sedation Permit Fees**

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit fee: \$300 plus \$25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.



C. Permit renewal fees:

1. Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit renewal fee: \$300 plus \$25 for each additional location.

**Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-407. Renumbered**

**Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

**R4-11-408. Repealed**

**Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

**R4-11-409. Repealed**

**Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

**ARTICLE 5. DENTISTS**

**R4-11-501. Dentist of Record**

- A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.
- B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
- C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
- D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
- E. A dentist of record shall:
  1. Remain responsible for the care of a patient during the course of treatment; and
  2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.



F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-502. Affiliated Practice**

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32- 1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

#### **R4-11-503. Repealed**

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-504. Renumbered**

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-505. Repealed**

#### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).



## **R4-11-506. Repealed**

### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

## **ARTICLE 6. DENTAL HYGIENISTS**

### **R4-11-601. Duties and Qualifications**

- A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.
- B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist;
  2. The hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
  3. The procedure is performed under the general supervision of a licensed dentist.
- C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:
1. Review of head and neck anatomy;
  2. Pharmacology of anesthetic and analgesic agents;
  3. Medical - dental history considerations;
  4. Emergency procedures;
  5. Selection of appropriate armamentarium and agents;
  6. Nitrous oxide administration;
  7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
    - a. Posterior superior alveolar injection,
    - b. Middle superior alveolar injection,
    - c. Anterior superior alveolar injection,
    - d. Nasopalatine injection,
    - e. Greater - palatine injection,
    - f. Inferior alveolar nerve injection,
    - g. Lingual injection,
    - h. Mental injection,
    - i. Long buccal injections, and
    - j. Nitrous oxide analgesia.
- D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.
- E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist's successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:
1. A review of oral histology,
  2. Inflammation and pathogenesis of a periodontal pocket,
  3. Patient assessment,
  4. Dental hygiene treatment planning,



5. Advanced root planing and debridement,
6. Subgingival curettage,
7. Suturing,
8. Wound repair and new attachment, and
9. Clinical experience in each of the following:
  - a. Root planing,
  - b. Subgingival curettage, and
  - c. Suturing.

F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist's license.

G. A dental hygienist shall not perform an irreversible procedure.

H. To qualify to use emerging scientific technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

#### **R4-11-602. Care of Homebound Patients**

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-603. Limitation on Number Supervised**

A dentist shall not supervise more than three dental hygienists at a time.

#### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-604. Selection Committee and Process**

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two



members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

#### **Historical Note**

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-605. Dental Hygiene Committee**

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

#### **Historical Note**

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-606. Candidate Qualifications and Submissions**

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

#### **Historical Note**

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-607. Duties of the Dental Hygiene Committee**

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and



suture placement under Article 6 and other procedures which may require certification under Article 6;

3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;

4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;

5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice; 6. Provide ad hoc committees to the Board upon request;

7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and

8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

#### **Historical Note**

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-608. Dental Hygiene Consultants**

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as Western Regional Examining Board (WREB) examiners for the clinical portion of the dental hygiene examination;

2. Act as Western Regional Examining Board (WREB) examiners for the local anesthesia portion of the dental hygiene examination;

3. Participate in Board-related procedures, including clinical evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and

4. Participate in onsite office evaluations for infection control, as part of a team.

#### **Historical Note**

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-609. Affiliated Practice**

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education that consists of the following subject areas:

a. A minimum of four hours in medical emergencies; and

b. A minimum of eight hours in at least two of the following areas:

i. Pediatric or other special health care needs,

ii. Preventative dentistry, or

iii. Public health community-based dentistry, and

2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the



continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1289(E) and (F) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.

E. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

F. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

#### **Historical Note**

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

## **ARTICLE 7. DENTAL ASSISTANTS**

### **R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision**

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
  - a. The placement of bands, crowns, and restorations;
  - b. Dental dam application;
  - c. Acid etch procedures; and
  - d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

#### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).



#### **R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision**

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-703. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-704. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-705. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-706. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-707. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).



#### **R4-11-708. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-709. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-710. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

## **ARTICLE 8. DENTURISTS**

#### **R4-11-801. Expired**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

#### **R4-11-802. Expired**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

#### **R4-11-803. Renumbered**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).



#### **R4-11-804. Renumbered**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-805. Renumbered**

##### **Historical Note**

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-806. Renumbered**

##### **Historical Note**

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

## **ARTICLE 9. RESTRICTED PERMITS**

### **R4-11-901. Application for Restricted Permit**

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
4. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4- 11-301(A)(6); and
6. A copy of the applicant's pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

##### **Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11- 901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

### **R4-11-902. Issuance of a Restricted Permit**

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:



1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

#### **Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-903. Recognition of a Charitable Dental Clinic Organization**

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

#### **Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-904. Determination of Minimum Rate**

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

#### **Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-905. Expired**

#### **Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405,



new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

#### **R4-11-906. Expired**

##### **Historical Note**

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

#### **R4-11-907. Repealed**

##### **Historical Note**

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-908. Repealed**

##### **Historical Note**

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-909. Renumbered**

##### **Historical Note**

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

## **ARTICLE 10. DENTAL TECHNICIANS**

#### **R4-11-1001. Expired**

##### **Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

#### **R4-11-1002. Expired**

##### **Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

#### **R4-11-1003. Renumbered**

##### **Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former



Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-1004. Renumbered**

##### **Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-1005. Renumbered**

##### **Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-1006. Repealed**

##### **Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

## **ARTICLE 11. ADVERTISING**

#### **R4-11-1101. Advertising**

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

##### **Historical Note**

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

#### **R4-11-1102. Advertising as a Recognized Specialist**

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,



7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
  - a. Has established examination requirements and standards,
  - b. Appraised an applicant's qualifications,
  - c. Administered comprehensive examinations, and
  - d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

#### **Historical Note**

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1103. Reserved**

#### **R4-11-1104. Repealed**

#### **Historical Note**

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-1105. Repealed**

#### **Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

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

### **R4-11-1201. Continuing Dental Education**

A. A licensee or certificate holder shall:



1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

#### **Historical Note**

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

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

A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation (CPR) healthcare provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A licensee or certificate holder shall include an affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee's or certificate holder's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A licensee or certificate holder shall submit a written request for an extension before the June 30 deadline. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.

E. The Board shall:

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

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

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



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

#### **Historical Note**

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2).

#### **R4-11-1203. Dentists and Dental Consultants**

Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:

1. At least 42 credit hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, parenteral sedation, or oral sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;
2. No more than 18 credit hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in chemical dependency, which may include tobacco cessation;
4. At least three credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

#### **Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

#### **R4-11-1204. Dental Hygienists**

A. A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 31 credit hours in any of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 14 credit hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three credit hours in infectious diseases or infectious disease control; and



5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.
- B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

#### **Historical Note**

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

#### **R4-11-1205. Denturists**

Denturists shall complete 36 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 21 credit hours in any of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour in chemical dependency, which may include tobacco cessation;
4. At least two credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

#### **Historical Note**

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

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

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

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



#### **Historical Note**

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

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

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

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

#### **Historical Note**

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

#### **R4-11-1208. Retired Licensees or Certificate Holders**

A retired licensee or certificate holder shall:

1. Except for the number of credit hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
  - a. Dentist - 27 credit hours of which no less than three credit hours shall be for CPR;
  - b. Dental hygienist - 21 credit hours of which no less than three credit hours shall be for CPR; and
  - c. Denturist - 9 credit hours of which no less than three credit hours shall be for CPR.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1209. Types of Courses**

A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;



2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
  - a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
  - b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
  - c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
  - d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental hygiene, or denturist association;
  - e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
    - i. Only once for materials presented;
    - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
    - iii. One credit hour for each hour of preparation, writing, and presentation; or
  - f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists and Dental Hygienists, no more than 24 hours;
2. Denturists, no more than 12 hours;
3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
4. Retired Denturists, no more than three hours.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).  
Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

## **ARTICLE 13. GENERAL ANESTHESIA AND SEDATION**

### **R4-11-1301. General Anesthesia and Deep Sedation**

A. Before administering general anesthesia, or deep sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:



- a. General information about the applicant such as:
    - i. Name;
    - ii. Home and office addresses and telephone numbers;
    - iii. Limitations of practice;
    - iv. Hospital affiliations;
    - v. Denial, curtailment, revocation, or suspension of hospital privileges;
    - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
    - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
  - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
    - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:
      - i. Emergency drugs;
      - ii. Electrocardiograph monitor;
      - iii. Pulse oximeter;
      - iv. Cardiac defibrillator or automated external defibrillator (AED);
      - v. Positive pressure oxygen and supplemental oxygen;
      - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
      - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
      - viii. Endotracheal tubes and appropriate connectors;
      - ix. Magill forceps;
      - x. Oropharyngeal and nasopharyngeal airways;
      - xi. Auxiliary lighting; xii. Stethoscope; and
      - xiii. Blood pressure monitoring device; and
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or deep sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
  3. Hold a valid license to practice dentistry in this state;
  4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and
  5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
    - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one or more of the following conditions:
1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
  2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the



American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or

3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:

a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;

b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and

c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia or deep sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of: a. Two dentists who are Board members, or Board designees for initial applications; or b. One dentist who is a Board member or Board designee for renewal applications.

2. The onsite team shall evaluate the following:

a. The availability of equipment and personnel as specified in subsection (B)(2);

b. Proper administration of general anesthesia or deep sedation to a patient by the applicant in the presence of the evaluation team;

c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;

d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;

e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and

f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:

a. Pass. Successful completion of the onsite evaluation;

b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;

c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;

d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or



- e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
- a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
  - b. Compliance with subsection (B)(2)(b).
- E. A Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia and deep sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
  2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
  3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
  4. A list of all medications given, with dosage and time intervals, and route and site of administration;
  5. Type of catheter or portal with gauge;
  6. Indicate nothing by mouth or time of last intake of food or water;
  7. Consent form; and
  8. Time of discharge and status, including name of escort.
- F. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
- G. The Section 1301 permit holder shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.
- H. The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
  2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
- J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.



### Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

### R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder may also administer parenteral sedation.
2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

a. General information about the applicant such as:

- i. Name;
- ii. Home and office addresses and telephone numbers;
- iii. Limitations of practice;
- iv. Hospital affiliations;
- v. Denial, curtailment, revocation, or suspension of hospital privileges;
- vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
- vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:

a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):

- i. Emergency drugs;
- ii. Positive pressure oxygen and supplemental oxygen;
- iii. Stethoscope;
- iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
- v. Oropharyngeal and nasopharyngeal airways;
- vi. Pulse oximeter;
- vii. Auxiliary lighting;
- viii. Blood pressure monitoring device; and
- ix. Cardiac defibrillator or automated external defibrillator (AED); and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:

- i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
- ii. Is present during the parenteral sedation procedure; and



- iii. After the procedure, monitors the patient until discharge;
- 3. Hold a valid license to practice dentistry in this state;
- 4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
- 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
  - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
  - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
  - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following conditions:
  - 1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
    - a. Sixty (60) didactic hours of basic parenteral sedation to include:
      - i. Physical evaluation;
      - ii. Management of medical emergencies;
      - iii. The importance of and techniques for maintaining proper documentation; and
      - iv. Monitoring and the use of monitoring equipment; and
    - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
  - 2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
    - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
    - b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
    - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
- D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.
  - 1. The onsite evaluation team shall consist of:
    - a. Two dentists who are Board members, or Board designees for initial applications, or
    - b. One dentist who is a Board member or Board designee for renewal applications.
  - 2. The onsite team shall evaluate the following:
    - a. The availability of equipment and personnel as specified in subsection (B)(2);
    - b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
    - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    - d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;



- e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
  - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
- a. Pass. Successful completion of the onsite evaluation;
  - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
  - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
  - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
  - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
- a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
  - b. Compliance with R4-11-1302(B)(2)(b).
- E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
1. Includes the following entries:
- a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
  - b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
  - c. A list of all medications given, with dosage and time intervals and route and site of administration;
  - d. Type of catheter or portal with gauge;
  - e. Indicate nothing by mouth or time of last intake of food or water;
  - f. Consent form; and
  - g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.
- F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.
- G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.



H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

#### **Historical Note**

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

#### **R4-11-1303. Oral Sedation**

A. Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.

2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:

a. The administered dose is within the Food and Drug Administration's (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored home use;

i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and

ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA maximum recommended dose on the date of treatment; and

b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.

B. To obtain or renew a Section 1303 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

a. General information about the applicant such as:

i. Name;

ii. Home and office addresses and telephone numbers;

iii. Limitations of practice;

iv. Hospital affiliations;

v. Denial, curtailment, revocation, or suspension of hospital privileges;

vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation:

a. Contains the following properly operating equipment and supplies during the provision of sedation:

i. Emergency drugs;



- ii. Cardiac defibrillator or automated external defibrillator (AED);
      - iii. Positive pressure oxygen and supplemental oxygen;
      - iv. Stethoscope;
      - v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      - vi. Pulse oximeter;
      - vii. Blood pressure monitoring device; and
      - viii. Auxiliary lighting; and
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      - i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
      - ii. Is present during the oral sedation procedure; and
      - iii. After the procedure, monitors the patient until discharge;
  - 3. Hold a valid license to practice dentistry in this state;
  - 4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
  - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    - a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
    - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
    - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following:
- 1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation within the last three years before submitting the permit application; or
  - 2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
    - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
    - b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant's commanding officer; and
    - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
  - 3. Provide proof of participation in 30 clock hours of Board recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
    - a. Training in basic oral sedation,
    - b. Pharmacology,
    - c. Physical evaluation,
    - d. Management of medical emergencies,
    - e. The importance of and techniques for maintaining proper documentation, and
    - f. Monitoring and the use of monitoring equipment.
- D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.
- 1. The onsite evaluation team shall consist of:



- a. For initial applications, two dentists who are Board members, or Board designees.
  - b. For renewal applications, one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
- a. The availability of equipment and personnel as specified in subsection (B)(2);
  - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
  - c. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
  - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the oral sedation record; and
  - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
- a. Pass. Successful completion of the onsite evaluation;
  - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
  - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
  - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is administered by a Section 1303 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to dental offices or dental clinics to provide oral sedation. The applicant must submit a completed affidavit verifying:
- a. That the equipment and supplies for the provision of oral sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place and in appropriate condition at the dental office or dental clinic where oral sedation is provided, and
  - b. Compliance with R4-11-1303(B)(2)(b).
- E. A Section 1303 permit holder shall keep an oral sedation record for each oral sedation procedure that:
- 1. Includes the following entries:
    - a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
    - b. Pre-operative and post-operative blood pressure;
    - c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
    - d. List of all medications given, including dosage and time intervals;
    - e. Patient's weight;
    - f. Consent form;
    - g. Special notes, such as, nothing by mouth or last intake of food or water; and
    - h. Time of discharge and status, including name of escort; and
  - 2. May include the following entries:



- a. Pre-operative and post-operative electrocardiograph report; and
- b. Intra-operative blood pressures.

F. The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.

G. The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:

1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
  - a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
  - b. PALS in a practice treating pediatric patients;
  - c. A recognized continuing education course in advanced airway management;
3. The Section 1303 permit holder ensures that:
  - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
  - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
  - c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
  - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

#### **Historical Note**

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

#### **R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)**

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.

1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:



1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
    - a. General information about the applicant such as:
      - i. Name;
      - ii. Home and office addresses and telephone numbers;
      - iii. Limitations of practice;
      - iv. Hospital affiliations;
      - v. Denial, curtailment, revocation, or suspension of hospital privileges;
      - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
  2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
    - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      - i. Emergency drugs;
      - ii. Electrocardiograph monitor;
      - iii. Pulse oximeter;
      - iv. Cardiac defibrillator or automated external defibrillator (AED);
      - v. Positive pressure oxygen and supplemental continuous flow oxygen;
      - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
      - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      - viii. Endotracheal tubes and appropriate connectors;
      - ix. Magill forceps;
      - x. Oropharyngeal and nasopharyngeal airways;
      - xi. Auxiliary lighting;
      - xii. Stethoscope; and
      - xiii. Blood pressure monitoring device; and
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
  3. Hold a valid license to practice dentistry in this state; and
  4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
    - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
    - c. A recognized continuing education course in advanced airway management.
- C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
  2. The onsite team shall evaluate the following:
    - a. The availability of equipment and personnel as specified in subsection (B)(2);



- b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
    - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
  - 3. The evaluation team shall recommend one of the following:
    - a. Pass. Successful completion of the onsite evaluation; or
    - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
  - 4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).
- D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
  - 1. Pre-operative and post-operative electrocardiograph documentation;
  - 2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
  - 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
  - 4. A list of all medications given, with dosage and time intervals and route and site of administration;
  - 5. Type of catheter or portal with gauge;
  - 6. Indicate nothing by mouth or time of last intake of food or water;
  - 7. Consent form; and
  - 8. Time of discharge and status, including name of escort.
- E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

#### **Historical Note**

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

#### **R4-11-1305. Reports of Adverse Occurrences**

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.



### Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

### **R4-11-1306. Education; Continued Competency**

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.

1. The program shall include instruction in the following subject areas:
  - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
  - b. Physiological and psychological risks for the use of various modalities of pain control;
  - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
  - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
  - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
  - a. Be the same for all dentists, whether general practitioners or specialists; and
  - b. Include each subject area listed in subsection (A)(1).
3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
  - a. General anesthesia,
  - b. Parenteral sedation,
  - c. Physical evaluation,
  - d. Medical emergencies,
  - e. Monitoring and use of monitoring equipment, or
  - f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
  - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
  - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
  - c. A recognized continuing education course in advanced airway management;
3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).



- C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
    - a. Oral sedation,
    - b. Physical evaluation,
    - c. Medical emergencies,
    - d. Monitoring and use of monitoring equipment, or
    - e. Pharmacology of oral sedation drugs and non-drug substances; and
  2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
    - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
    - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    - c. Pediatric advanced life support (PALS);
    - d. A recognized continuing education course in advanced airway management; and
  3. Complete at least 10 oral sedation cases a calendar year.

#### **Historical Note**

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

#### **R4-11-1307. Renewal of Permit**

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
  2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
  3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
  4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
  2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

#### **Historical Note**

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).



## ARTICLE 14. DISPENSING DRUGS AND DEVICES

### R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:

1. Date of issuance;
2. Name and address of the patient to whom the prescription is issued;
3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
4. Name and address of the dentist prescribing the drug; and
5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

#### Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

### R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:

1. The dentist's name, address, and telephone number;
2. The serial number;
3. The date the drug or device is dispensed;
4. The patient's name;
5. Name, strength, and quantity of drug or name and quantity of device dispensed;
6. The name of the drug or device manufacturer or distributor;
7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:

1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
  - a. A patient's allergies,
  - b. Incompatibilities with a patient's currently-taken medications,
  - c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
  - d. The frequency of refills;
2. Verify that the dosage is within proper limits;
3. Interpret the prescription order;
4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;



6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1403. Storage and Packaging**

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
  - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
  - b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1404. Recordkeeping**

A. A dentist shall:

1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
  - a. File Schedule II drug orders separately from all other prescription orders;
  - b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
  - c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;



4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
  5. Record the date the drug or device is dispensed on each prescription order and label.
- B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C. A dentist shall maintain:
1. Purchase records of all drugs and devices for three years from the date purchased; and
  2. Dispensing records of all drugs and devices for three years from the date dispensed.
- D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
  2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
  3. Shall maintain the inventory for three years from the inventory date;
  4. May use one inventory book for all controlled substances;
  5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
  6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.
- E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
  2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
  3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).
- F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1405. Compliance**

- A. A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
  2. For controlled substance theft or loss, complete a DEA 106 form; and
  3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.
- B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective



February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1406. Dispensing for Profit Registration and Renewal**

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:

1. A completed registration form that includes the following information:
  - a. The dentist's name and dental license number;
  - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
  - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

#### **Historical Note**

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-1407. Renumbered**

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-1408. Renumbered**

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-1409. Repealed**

#### **Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

## **ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION**

#### **R4-11-1501. Ex-parte Communication**

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.



#### **Historical Note**

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

**R4-11-1502. Dental Consultant Qualifications** A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

#### **Historical Note**

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

#### **R4-11-1503. Initial Complaint Review**

A. The Board's procedures for complaint notification are:

1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:

- a. A formal interview is scheduled,
- b. The complaint is tabled,
- c. A postponement or continuance is granted, and
- d. A subpoena, notice, or order is issued.

2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.

3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:

1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.

a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.

b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.

2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

#### **Historical Note**

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

#### **R4-11-1504. Postponement of Interview**

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the



next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:

1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

#### **Historical Note**

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

## **ARTICLE 16. EXPIRED**

### **R4-11-1601. Expired**

#### **Historical Note**

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

## **ARTICLE 17. REHEARING OR REVIEW**

### **R4-11-1701. Procedure**

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.



D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

#### **Historical Note**

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

## **ARTICLE 18. BUSINESS ENTITIES**

### **R4-11-1801. Application**

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

### **R4-11-1802. Display of Registration**

A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).



**DEPARTMENT OF AGRICULTURE**

Title 3, Chapter 8, Articles 1-7, Department of Agriculture - Pest Management Division



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 8, 2021

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

**FROM:** Council Staff

**DATE:** August 20, 2021

**SUBJECT: DEPARTMENT OF AGRICULTURE**  
Title 3, Chapter 8, Articles 1-7, Department of Agriculture - Pest Management Division

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### Summary

This Five-Year Review Report (5YRR) from the Department of Agriculture (Department) relates to all rules in Title 3, Chapter 8 related to the Pest Management Division (Division). Specifically, the Articles under review relate to the following:

- Article 1: General and Administrative Provisions
- Article 2: Certification, Registration and Licensure; Continuing Education
- Article 3: Pest Management
- Article 4: Supervision
- Article 5: Recordkeeping and Reporting
- Article 6: Inspections; Disciplinary Procedures
- Article 7: Reserved

In the previous 5YRR for this Chapter, approved by the Council in December 2016, the Division proposed to amend eight rules. The Division indicates it implemented six of the eight rule amendments proposed in the prior 5YRR. The Division indicates two proposed changes were not implemented because it was determined they were hyper-technical and unnecessary. Specifically, the amendments entailed changing the phrase "treatment holes" to "drill holes" and

the word “at” to “to.” The Division also notes that all the rules were moved from Title 4, Chapter 29 to Title 3, Chapter 8 in a 2017 rulemaking which recodified the rules.

### **Proposed Action**

In the current report, the Division proposes the following rule amendments:

- Because pesticide labels do not recommend uses or non-uses, and either allow or prohibit uses, it is recommended to change A.A.C. R3-8-301(B)(4), as follows:

#### **R3-8-301. Using Pesticides and Devices**

B. An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:

4. Uses a pesticide in a food-handling establishment ~~that the label or labeling recommends not be used in a~~ is not labeled for food-handling establishments;

- It is recommended to amend A.A.C. R3-8-501(B)(7) to make it consistent with A.A.C. R3-8-306(A)(7), as follows:

#### **R3-8-501. Applicator Recordkeeping**

B. Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:

7. Amount of pesticide applied, in terms of percent active ingredient and ~~total amount diluent (water, etc.); total amount of concentrate and total amount of diluent (water, etc.); or total amount of ready-to-use product by weight or volume (e.g. lbs, grams, ounces, etc.)~~ volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations; and...

- Because the current language of A.A.C. R3-8-308(B)(1) could be interpreted to impose extra record-keeping and fee requirements, it is recommended to amend that section as follows:

#### **R3-8-308(B). Performing Wood-destroying Insect Management**

B. An applicator shall not perform wood-destroying insect management, issue a treatment proposal, or quote a fee for service, until the business licensee that employs the applicator ensures that:

1. An on-site inspection of the property is performed, ~~in accordance with, R3-8-307,~~ by a certified applicator meeting the training requirement under A.R.S. § 3-3632(E).

- To eliminate over-reaching by PMD in precisely dictating the size of lettering that can be used on vehicles, it is recommended to delete A.A.C. R3-8-310(B)(2)(g)(iv) and (v), as follows:

### **R3-8-310. Business Management**

#### B. Use of business name and license number

2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the PMD, on:

g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:

~~iv. Uses at least two-inch letters for the principal words in the registered business name and at least one and one-half inch letters for other words in the business name; and~~

~~v. Uses at least two-inch numbers for the license number.~~

- For clarity and ease of compliance, it is recommended to amend A.A.C. R3-8-501(E)(1) and (5), as follows:

### **R3-8-501. Applicator Recordkeeping**

#### E. WDIIR. An applicator who completes a WDIIR shall:

1. Complete the WDIIR using a the most current form approved by the PMD. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the PMD approved form;

5. Ensure that the following information is included on the WDIIR:

b. Date of wood-destroying insect inspection, ~~and the WDHR number;~~

- To correct references to expired rules, it is recommended that A.A.C. R3-8-404(2) and R3-8-502(A) be amended, as follows:

### **R3-8-404. Branch Supervisors**

2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though ~~R4-29-201(C)~~ R3-8-201(C) still applies.

### **R3-8-502. Qualifying Party Recordkeeping**

A. In addition to ensuring that the records required under ~~R4-29-501~~ R3-8-501 are made, a QP shall ensure that complete records are made and maintained of the training, supervision, and equipping provided to an applicator.

- Because pesticide science has improved since the rule was written, more than 30 years ago, it is recommended that R3-8-308(D)(2) be amended to allow licensees to use modern pesticides, which can be concentrated and allow less product to be applied to the environment, while proving to be just as effective:

### R3-8-308. Performing Wood-destroying Insect Management

#### D. Pretreatment for commercial or residential construction.

2. Except as specified ~~in subsection (D)(3) and unless on~~ the termiticide label ~~requires more~~, an applicator shall treat all critical areas during a pretreatment at a rate ~~of four gallons of chemical preparation per 10 linear feet~~ allowed by the product label for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot or as specified by labeling instructions.

The Division anticipates submitting a rulemaking to the Council to address these proposed amendments by November 2021.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Division states that the last complete economic, small business, and consumer impact statement was done in or about 2016. The Division goes on to indicate that they were operating under a different set of statutes and rules. The Division states that the proposed course of action in this five-year report is designed to clarify and update rules, and reduce regulatory burden. Stakeholders include the Department, commercial pest control businesses, and the pesticide applicators and inspectors employed by these companies.

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 Division is required by A.R.S. § 3-3618 to impose fees for licenses, registrations, and certifications. The Division believes the benefits of the rules outweigh the minimal costs of the rules and impose the least burden and cost to any regulated person. A pesticide advisory council was created by A.R.S. § 3-3605. The Division indicates that the council is regularly consulted on rule changes and fees, and takes an active role in ensuring appropriate regulatory oversight with the least burden to regulated persons. Lastly, the Division says that as a result of the council's input, the current licensing fees were extended by expedited rulemaking to June 30, 2022, effectively delaying a 25% increase in licensing fees.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Division has received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Division states the rules are generally clear, concise, and understandable, except as outlined in the proposed course of action section above.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Division states the rules are generally consistent with other rules and statutes, except as outlined in the proposed course of action section above.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Division indicates that the rules are effective in achieving their regulatory objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Division states that the rules are currently enforced as written except as to the possible interpretation of R3-8-308(H). Specifically, the Division states this rule could be interpreted to require a company to perform a termite inspection prior to treatment even if the consumer does not hire the company to perform an inspection. The Division indicates members of the industry have complained that competitors are not following this requirement.

The Division indicates it has not enforced this aspect of the rule as written, and does not want to be obligated to do so, because enforcement would result in unnecessary costs to regulated parties and consumers. The Division states, for a termite inspection, a company may charge a consumer between \$60 and \$100. The average cost would conceivably be \$80 ( $\$60 + \$100 / 2 = \$80$ ). The Division states, during the 2020 calendar year, termite companies performed 74,256 termite treatments. The Division explains, if a company is forced to perform an inspection prior to treatment, even though the consumer may have hired another company to perform an inspection, the termite company may charge the consumer an additional \$60 to \$100 for the inspection, plus whatever fee the company charges for the termite treatment. When multiplied by the number of termite treatments, the cost to consumers would be quite large.

The Division states, clarifying the rule to delete this requirement will definitively avoid that extra cost to the consuming public and will also avoid a requirement for regulated parties to report termite inspections to The Division. The Division charges a \$2.00 reporting fee for inputting, storing and maintaining such reports. The Division states enforcing the rule as written would result in imposition of \$148,512 additional regulatory fees (74,256 additional mandatory inspections multiplied by the \$2.00 reporting fee). Therefore, clarification is necessary, and failure to clarify the rule has a potential to increase costs of regulated parties and consumers.

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

Federal laws governing the requirements for pesticide labels are found in the Code of Federal Regulations (40 CFR Part 156). The Division enforces label requirements, but indicates its rules are not more stringent than federal law.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037, if a rule requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

Here, the Division indicates that it does not issue general permits under several of the exceptions outlined in A.R.S. § 41-1037, namely, issuance of alternative types of licenses, certifications, and registrations are specifically authorized by A.R.S. §§ 3-3613 to 3-3618; issuance of a general permit is not technically feasible and would not meet statutory requirements; issuance of a general permit would result in additional regulatory requirements and additional cost to applicants; and the Division licensing statutes create licenses, certifications and registrations for specific types of activities, which are not similar. Council staff believes the Division is in compliance with A.R.S. § 41-1037.

**11. Conclusion**

This 5YRR from the Department of Agriculture relates to all rules in Title 3, Chapter 8 related to the Pest Management Division. The Division indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced, other than as outlined in the proposed course of action section. Therein, the Division has proposed several rule amendments to improve the clarity, consistency, and enforcement of the rules. The Division anticipates submitting a rulemaking to address the issues outlined in this report to the Council by November 2021.

Council staff recommends approval of this report.



# Arizona Department of Agriculture

Pest Management Division  
1688 W. Adams Street, Phoenix, Arizona 85007  
(602) 255-3664 FAX (602) 542-0466

June 29, 2021

Ms. Nicole Sornsin  
Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 305  
Phoenix, Arizona 85007  
[grrc@azdoa.gov](mailto:grrc@azdoa.gov)

SENT VIA EMAIL

RE: Department of Agriculture, Pest Management Division, A.A.C. Title 3, Chapter 8, Articles 1-7, Five-Year Review Report

Dear Ms. Sornsin:

Enclosed please find the five-year review report for A.A.C. Title 3, Chapter 8 from the Department of Agriculture, Pest Management Division ("PMD"), which was reportedly due May 31, 2021. PMD believes that it is arguable that the report should not be due until 2022, because the rules were only enacted in June, 2017, and were not effective until August, 2017.

PMD reviewed all the rules in Chapter 8. It does not intend for any rules to expire under A.R.S. § 41-1056(J).

PMD certifies that it is in compliance with A.R.S. § 41-1091.

Please contact me at (602) 255-3663 or [vcraig@azda.gov](mailto:vcraig@azda.gov) with any questions about this report.

Sincerely,

A handwritten signature in black ink that reads "Vince Craig".

Vince Craig, Associate Director  
Pest Management Division  
Arizona Department of Agriculture

cc. Anakaren Lemus at [anakaren.lemus@azdoa.gov](mailto:anakaren.lemus@azdoa.gov)

**ARIZONA DEPARTMENT OF AGRICULTURE  
PEST MANAGEMENT DIVISION**

**2021 FIVE-YEAR REVIEW REPORT**



## **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 schedule for reviews is determined by GRRC. The report for the Department of Agriculture, Pest Management Division ("PMD") rules listed under A.A.C. Title 3, Chapter 8 was due May 31, 2021, but was delayed because of PMD did not receive GRRC's notice that the report was due.

PMD licenses commercial pest control businesses in Arizona and the pesticide applicators and inspectors employed by these companies. It also enforces laws governing pesticide use and storage. Statutes designate the Director of the Arizona Department of Agriculture as the head of PMD and assigns the Director the authority over and responsibility for enforcing PMD law. Pesticide applications used directly in the commercial production of crops and animals or used not-for-hire on golf courses are exempt from PMD regulations. The Environmental Services Division of the Arizona Department of Agriculture regulates those types of applications.

**ARIZONA DEPARTMENT OF AGRICULTURE  
PEST MANAGEMENT DIVISION**

**AMENDMENT OF JUNE 30, 2021, FIVE-YEAR REVIEW REPORT**

**TITLE 3. AGRICULTURE  
CHAPTER 8. DEPARTMENT OF AGRICULTURE – PEST MANAGEMENT  
DIVISION  
ARTICLES 1 THROUGH 7**

**AUGUST 20, 2021**

**1. Authorization of the rules by existing statutes**

A.R.S. § 3-3603.

**2. The objective of each rule:**

Rule	Objective
R3-8-101	To establish definitions of additional terms used in the rules.
R3-8-102	To establish pest management certification categories.
R3-8-103	To establish certification fees.
R3-8-104	To establish Pest Management Division advisory council.
R3-8-105	Reserved.
R3-8-106	Reserved.
R3-8-107	To establish licensing time frames.
R3-8-108	Reserved.
R3-8-201	To establish criteria for pest management certification.
R3-8-202	To establish application requirements for pest management business license.
R3-8-203	To establish application requirements for pest management applicator license.
R3-8-204	To establish application requirements for pest management Qualified Applicator certification.
R3-8-205	To establish application requirements for Qualifying Party registration.
R3-8-206	To establish application requirements for branch office registration.
R3-8-207	To establish application requirements for applicator registration by business licensee.
R3-8-208	To establish renewal requirements for licenses and certifications.
R3-8-209	To establish requirements for a change in a business license.
R3-8-210	To establish requirements for broadening a certification.
R3-8-211	To set parameters for certification examinations.
R3-8-212	Reciprocity provision for waiver of examination requirements.
R3-8-213	To establish requirements for a political subdivision responsible individual.
R3-8-214	Reserved.
R3-8-215	To establish continuing education requirements.
R3-8-216	To establish requirements for approval of continuing education courses.
R3-8-301	To establish restrictions on use of pesticides and pesticide devices.
R3-8-302	To establish requirements for storage and disposal of pesticides and pesticide devices.
R3-8-303	To establish further requirements for pesticide and pesticide-device storage areas.
R3-8-304	To establish exemptions from licensure for specified pesticide devices.
R3-8-305	To establish requirements for equipping a service vehicle.
R3-8-306	To establish requirements for providing notice of applications to customers.
R3-8-307	To establish requirements for performing a wood-destroying insect inspection.

R3-8-308	To establish requirements for performing wood-destroying insect treatment.
R3-8-309	To establish requirements for termite warranties and retreatments.
R3-8-310	To establish responsibilities of business management.
R3-8-311	Reserved.
R3-8-312	Reserved.
R3-8-313	Reserved.
R3-8-314	Reserved.
R3-8-315	Reserved.
R3-8-316	Reserved.
R3-8-317	Reserved.
R3-8-318	Reserved.
R3-8-319	Reserved.
R3-8-320	Reserved.
R3-8-401	To establish requirements for supervision of applicators by Qualifying Parties and business licensees.
R3-8-402	To establish a Qualifying-Party requirement for a business or school district.
R3-8-403	To establish the duties and responsibilities of a managing Qualifying Party.
R3-8-404	To establish the duties and responsibilities of branch supervisors.
R3-8-405	To require that business licensees and school districts ensure proper training and supervision of Qualifying Parties.
R3-8-406	To establish duties and responsibilities of responsible individuals of a political subdivision.
R3-8-407	To establish joint responsibility of supervisor for actions of a supervised person.
R3-8-408	Reserved.
R3-8-409	Reserved.
R3-8-410	Reserved.
R3-8-411	Reserved.
R3-8-412	Reserved.
R3-8-413	Reserved.
R3-8-414	Reserved.
R3-8-415	Reserved.
R3-8-416	Reserved.
R3-8-417	Reserved.
R3-8-418	Reserved.
R3-8-501	To establish record-keeping requirements for applicators.
R3-8-502	To establish record-keeping requirements for Qualifying Parties.
R3-8-503	To establish record-keeping requirements for business licensees and political subdivisions.
R3-8-504	To establish obligation of business licensees and political subdivisions to report adverse effects of pesticide release.
R3-8-505	Requiring reports of pesticide use related to presence in groundwater.
R3-8-601	To establish responsibility of all licensees to submit to inspection and to provide requested records.
R3-8-602	Requiring compliance with Pest Management Division monitoring.
R3-8-603	Setting parameters for complying with corrective orders.
R3-8-604	Setting out factors to be considered in ordering disciplinary action.
R3-8-605	Providing for consent agreements.
R3-8-606	Setting out point values for aggravating and mitigating factors.
R3-8-607	Reserved.
R3-8-608	Reserved.
R3-8-609	Reserved.
R3-8-701	Reserved
R3-8-702	Reserved
R3-8-703	Reserved

R3-8-704	Reserved
R3-8-705	Reserved
R3-8-706	Reserved
R3-8-707	Reserved
R3-8-708	Reserved

**3. Are the rules effective in achieving their objectives?**

Yes.

**4. Are the rules consistent with other rules and statutes?**

Except as stated herein, the rules are consistent with each other and with PMD statutes.

**5. Are the rules enforced as written?**

Yes, with the exception posed in Section 8 regarding industry's interpretation of R3-8-308(H).

**6. Are the rules clear, concise, and understandable?**

Except as stated herein, the rules are clear, concise, and understandable.

**7. Has the agency received written criticisms of the rules within the last five years?**

PMD has not received any written criticisms of the rules.

**8. Economic, small business, and consumer impact comparison:**

The last complete economic, small business, and consumer impact statement was done in or about 2016. At that time, PMD was operating under a different set of statutes and rules. However, in the five-year review report of 2016, the agency contemplated several rule changes that were designed to directly reduce regulatory fees by \$400,000.

The proposed amendments in this five-year review will not directly reduce regulatory fees. Nor will they add expenses to any political subdivision, consumers, or the regulated parties (including small businesses). It is estimated that the majority of regulated parties would qualify as small businesses. The proposed course of action in this five-year review is designed to clarify and update the rules, and reduce regulatory burdens.

For example, A.A.C. R3-8-308(B) may be interpreted to require a company to perform a termite inspection prior to treatment even if the consumer does not hire the company to perform an inspection. Members of the industry have complained that competitors are not following this requirement.

PMD has not enforced this aspect of the rule as written, and does not want to be obligated to do so, because enforcement would result in unnecessary costs to regulated parties and consumers. For a termite inspection, a company may charge a consumer between \$60 and \$100. The average cost would conceivably be \$80 ( $\$60 + \$100 / 2 = \$80$ ). During the 2020 calendar year, termite companies performed 74,256 termite treatments. If a company is forced to perform an inspection prior to treatment, even though the consumer may have hired another company to perform an inspection, the termite company may charge the consumer an additional \$60 to \$100 for the inspection, plus whatever fee the company charges for the termite treatment. When multiplied by the number of termite treatments, the cost to consumers would be quite large. Clarifying the rule to delete this requirement will definitively avoid that extra cost to the consuming public. It will also avoid a requirement for regulated parties to report termite inspections to PMD. PMD charges a \$2.00 reporting fee for inputting, storing and maintaining such reports. Enforcing the rule as written would result in imposition of \$148,512 additional regulatory fees (74,256 additional mandatory inspections multiplied by the \$2.00 reporting fee). Therefore,

clarification is necessary, and failure to clarify the rule has a potential to increase costs of regulated parties and consumers.

**9. Has the agency received any business competitiveness analyses of the rules?**

No.

**10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

PMD implemented six of the eight rule amendments proposed in the previous five-year review report. Two proposed changes were not implemented because it was determined that the changes were hyper-technical and unnecessary (changing the phrase "treatment holes" to "drill holes" and the word "at" to "to"). It should also be noted that the entire set of rules was moved from A.A.C. Title 4, Chapter 29, to A.A.C. Title 3, Chapter 8, in 2017.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

PMD is required by A.R.S. § 3-3618 to impose fees for licenses, registrations, and certifications. The benefits of the rules outweigh the minimal cost of the rules and imposes the least burden and cost to any regulated persons. A pesticide advisory council was created by A.R.S. § 3-3605. The council is regularly consulted on rule changes and fees, and takes an active role in ensuring appropriate regulatory oversight with the least burden to regulated persons. As a result of the council's input, the current licensing fees were extended by expedited rulemaking to June 30, 2022, effectively delaying a 25% increase in licensing fees.

**12. Are the rules more stringent than corresponding federal laws?**

Federal law governs pesticide labels, and PMD enforces label requirements. Requirements for pesticide labels are found in the Code of Federal Regulations (40 CFR Part 156). However, PMD's rules are not more stringent than federal law.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. §41-1037 or explain why the agency believes an exception applies:**

PMD does not issue general permits, as A.R.S. § 3-3618 authorizes PMD to issue licenses, registrations, and certifications for the following types of licenses: a business license; a branch office registration; a branch supervisor registration; a qualifying party registration; an applicator certification; a qualified applicator certification; and an applicator registration. A general permit is not practical because each type of license, registration, or certification requires different skill sets, purposes, and/or qualifications.

For example, landscapers do not need a license, unless they engage in certain activities, in which case they do need a license. A.R.S. § 3-3613.

Applicators are certified under A.R.S. § 3-3614, but there are applicator certifications and "qualified applicator" certifications, which could be obtained in one or more categories, such as industrial, institutional, structural and health-related pest management; wood-destroying organism management; ornamental and turf pest management; right-of-way pest management; aquatic pest management; and fumigation. All applicators are required to pay for and pass proficiency tests in each category in which they are licensed. Qualified applicators must possess a higher level of experience or a combination of experience and a college degree, and must pass a criminal-records check.

Pesticide management professions are divergent. There is little similarity between categories of license, certification, or registration; and little similarity in the purpose of each.

A general permit would not comply with A.R.S. § 3-3618 which requires that separate fees shall be set by rule for each type of license. Some license fees may be tiered depending on the type of license. If all categories of pest management were put under the umbrella of a general permit, the cost to the practitioner would be extreme, because he or she would have to pay for and take certification exams for each category covered by the general permit, and pay the licensing fees for each category. PMD is not authorized to set a general permit fee.

Even if PMD were statutorily authorized to issue general permits, it would require a new set of complex rules to handle the issuance of general permits in addition to specific licenses, registrations or certifications.

In conclusion, PMD maintains that a general permit is not allowable under A.R.S. § 41-1037, because:

- issuance of alternative types of licenses, certifications, and registrations are specifically authorized by A.R.S. §§ 3-3613 to 3-3618;
- issuance of a general permit is not technically feasible and would not meet statutory requirements;
- issuance of a general permit would result in additional regulatory requirements and additional cost to applicants; and
- the PMD licensing statutes create licenses, certifications and registrations for specific types of activities, which are not similar.

#### **14. Proposed course of action:**

The following rule changes are proposed:

- a. Because pesticide labels do not recommend uses or non-uses, and either allow or prohibit uses, it is recommended to change A.A.C. R3-8-301(B)(4), as follows:

R3-8-301. Using Pesticides and Devices

B. An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:

4. ~~Uses a pesticide in a food-handling establishment that the label or labeling recommends not be used in a~~ is not labeled for food-handling establishments; . . .

- b. It is recommended to amend A.A.C. R3-8-501(B)(7) to make it consistent with A.A.C. R3-8-306(A)(7), as follows:

R3-8-501. Applicator Recordkeeping

B. Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:

7. ~~Amount of pesticide applied, in terms of percent active ingredient and total amount diluent (water, etc.); total amount of concentrate and total amount of diluent (water, etc.); or total amount of ready-to-use product by weight or volume (e.g. lbs, grams, ounces, etc.)~~ volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations; and . . .

- c. Because the current language of A.A.C. R3-8-308(B)(1) could be interpreted to impose extra record-keeping and fee requirements, it is recommended to amend that section as follows:

R3-8-308(B). Performing Wood-destroying Insect Management

B. An applicator shall not perform wood-destroying insect management, issue a treatment proposal, or quote a fee for service, until the business licensee that employs the applicator ensures that:

1. An on-site inspection of the property is performed, ~~in accordance with, R3-8-307,~~ by a certified applicator meeting the training requirement under A.R.S. § 3-3632(E).

- d. To eliminate over-reaching by PMD in precisely dictating the size of lettering that can be used on vehicles, it is recommended to delete A.A.C. R3-8-310(B)(2)(g)(iv) and (v), as follows:

R3-8-310. Business Management

B. Use of business name and license number

2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the PMD, on:

g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:

~~iv. Uses at least two inch letters for the principal words in the registered business name and at least one and one half inch letters for other words in the business name; and~~

~~v. Uses at least two inch numbers for the license number.~~

- e. For clarity and ease of compliance, it is recommended to amend A.A.C. R3-8-501(E)(1) and (5), as follows:

R3-8-501. Applicator Recordkeeping

E. WDIIR. An applicator who completes a WDIIR shall:

1. Compete the WDIIR using a the most current form approved by the PMD. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the PMD approved form;

5. Ensure that the following information is included on the WDIIR:

b. Date of wood-destroying insect inspection, ~~and the WDIIR number;~~

- f. To correct references to expired rules, it is recommended that A.A.C. R3-8-404(2) and R3-8-502(A) be amended, as follows:

R3-8-404. Branch Supervisors

2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though ~~R4-29-201(C)~~ R3-8-201(C) still applies.

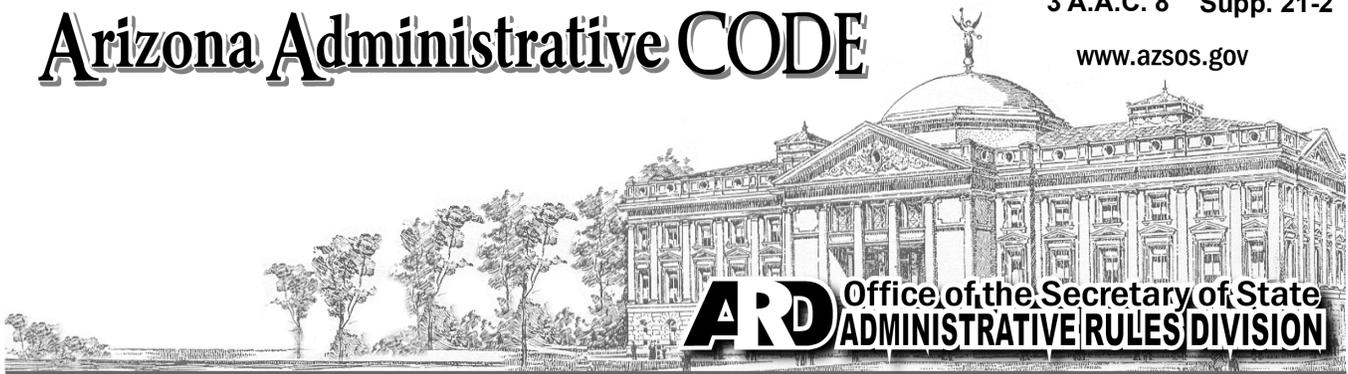
R3-8-502. Qualifying Party Recordkeeping

- A. In addition to ensuring that the records required under ~~R4-29-501~~ R3-8-501 are made, a QP shall ensure that complete records are made and maintained of the training, supervision, and equipping provided to an applicator.
- g. Because pesticide science has improved since the rule was written, more than 30 years ago, it is recommended that R3-8-308(D)(2) be amended to allow licensees to use modern pesticides, which can be concentrated and allow less product to be applied to the environment, while proving to be just as effective:

R3-8-308. Performing Wood-destroying Insect Management

D. Pretreatment for commercial or residential construction.

2. Except as specified ~~in subsection (D)(3) and unless~~ on the termiticide label ~~requires more,~~ an applicator shall treat all critical areas during a pretreatment at a rate ~~of four gallons of chemical preparation per 10 linear feet~~ allowed by the product label for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot or as specified by labeling instructions.



## TITLE 3. AGRICULTURE

### CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

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

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

This Chapter contains Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2021 through June 30, 2021.

[R3-8-103.](#)     [Fees; Charges; Exemption](#) .....4

#### Questions about these rules? Contact:

Name: Vince Craig, Associate Director, PMD  
Address: Department of Agriculture  
Pest Management Division  
1688 W. Adams St.  
Phoenix, AZ 85007  
Telephone: (602) 255-3663  
Fax: (602) 542-0466  
E-mail: [vcraig@azda.gov](mailto:vcraig@azda.gov)  
Website: <https://agriculture.az.gov/about-us/divisions/pest-management-division>

#### The release of this Chapter in Supp. 21-2 replaces Supp. 19-1, 1-27 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

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### 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.

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



Administrative Rules Division
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TITLE 3. AGRICULTURE

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

Authorizing statute: A.R.S. § 3-107(A)(1); A.R.S. § 3-3603(A)(1)

Laws 2016, Ch. 221 established the Pest Management Division within the Department of Agriculture (Department). The Department was exempt from the rulemaking requirements of Title 41, Chapter 6 under this law. Rules were recodified to this Chapter from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017; once recodified the rules were amended at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

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**ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS****R3-8-101. Definitions**

In addition to the definitions provided in A.R.S. § 3-3601, the following terms apply to this Chapter:

“Administratively complete” means the application contains all components required by statute or this Chapter to be submitted to the PMD to enable the PMD to determine whether to grant a license or approval.

“Advertisement” means a written or oral notice, including a business card, website, or telephone directory listing, which is intended, directly or indirectly, to induce a person to enter into an agreement for pest management services.

“Applicator” means an individual who provides pest management services. Applicator does not include a laborer.

“Applicator certification” means a certified applicator license.

“Broadening” means to add another category of work to an existing certification.

“Certified applicator” means an individual who is licensed by the PMD to provide pest management services, including a QA.

“CEU” means continuing education unit.

“Continuing education unit” means 50 minutes of participation in continuing education.

“Control” or “manage” means, with respect to pests, to exterminate, eradicate, destroy, kill, repel, attract, sterilize, mitigate, remove, or a combination of these activities.

“Department” means the Arizona Department of Agriculture.

“Disassociate” means to die, become disabled, resign, retire, be ill or take leave for more than 14 days, be terminated, or be called to active military duty.

“Entire structure” means all critical areas as defined in this Chapter and as specified on product labeling for both the interior and exterior of a structure.

“EPA” means the U.S. Environmental Protection Agency.

“EPA registration number” means the actual EPA registration number of a product or the federal provision exempting the product from EPA registration.

“Faulty grade” means the top of the foundation is even with or below the adjacent earth. The existing earth level shall be considered grade. Specific exceptions are basement construction and sunken room construction when the surrounding foundation is at least 3 inches above the exterior grade level.

“Fog or fogging” means applying a pesticide by a flammable, aerosolizing thermal or other generator that forms particles less than 10 microns in diameter.

“Food-handling establishment” means a place, other than a private residence, in which food is received, served, stored, packaged, prepared, or processed.

“Fumigant” means a chemical substance with a vapor pressure greater than five millimeters of mercury at 25 degrees Centigrade that is used to destroy plant or animal life.

“Fumigation” means a method of pest management that completely fills an area with a fumigant to suffocate or poison pests within the area.

“Fungi” means saprophytic and parasitic organisms that lack chlorophyll such as molds, rusts, mildews, smuts, and yeast, except those on or in living people or animals or processed foods, beverages, or pharmaceuticals.

“Health care institution” means a health care institution licensed pursuant to title 36, chapter 4 and includes doctor and dental offices.

“Label” means a written, printed, electronic or graphic document that is approved by the EPA and on or attached to a pesticide container, the wrapper of a pesticide container, or a device.

“Labeling” means a written, printed, electronic or graphic document that is authorized by the manufacturer or a state or federal agency to accompany a pesticide or device, or is referred to on the label or in literature accompanying the pesticide or device.

“Laborer” means an individual who performs physical labor necessary for an applicator to provide pest management services, including drilling and trenching, but who does not handle any pesticide container that has ever been opened, identify infestations, make inspections, make inspection reports or recommendations with respect to infestations, or use any device for the purpose of eliminating, exterminating, controlling or preventing infestations, except that laborer includes an individual who assists with the use of a tarp on a structure for a fumigation performed by an applicator.

“Pest” means a vertebrate or invertebrate insect, bird, mammal, or other animal or organism, or a weed or plant pathogen that is in an undesirable location.

“Pesticide,” as defined in A.R.S. § 3-3601, includes an insecticide, fungicide, rodenticide, termiticide, fumigant, larvicide, piscicide, adulticide, herbicide, nematocide, avicide, or molluscicide.

“PMD” means Pest Management Division.

“Primary service,” as used in A.R.S. § 3-3613(B)(3), means applying an herbicide as the only or predominant service under a verbal or written contract to maintain a property.

“Project” means an individual address or a privately owned or individually owned dwelling.

“QA” means certified qualified applicator.

“QP” means qualifying party.

“Qualified applicator certification” means a certified qualified applicator license.

“SDS” means safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

“Service container” means a receptacle that is used to hold, store, or transport a pesticide concentrate or use-dilution preparation other than the original labeled receptacle provided by the manufacturer, a measuring instrument, or application equipment.

“Signal word” means a word printed on a label that indicates the toxicity level of the pesticide in the container to which the label is affixed.

“Special Local Need registration” means an authorization from the Department to use a pesticide, which meets an Arizona-specific need, in Arizona according to the terms of the registration.

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“Specimen label” means a label other than the label attached to a pesticide container that contains the same information as the labeling; including an electronic label.

“Structure” means all parts of a building, whether vacant or occupied, in all stages of construction.

“Subterranean termites” means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.

“Supplemental wood-destroying insect inspection” means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.

“Tag” means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.

“TARF” means termite action report form.

“Termiticide” means a chemical registered by the EPA and the Department and used for control of termites.

“Water-retention basin” means an area to temporarily hold water run-off until the water dissipates.

“WDIIR” means wood-destroying insect inspection report.

“Wood-destroying insect inspection” means an inspection for the presence or absence of wood-destroying insects.

**Historical Note**

New Section recodified from R4-29-101 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-102. Certification Categories; Scope**

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in, on, around or adjacent to a structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man holes, not covered by another certification category; pest management of health related pests wherever found; but excluding anti-microbial pest management and fungi inspection
2. Wood-destroying organism management.
  - a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
  - b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.
3. Ornamental and turf: pest management, including weeds, pests in trees, shrubs, and flowers, turf and bare ground, not covered by the right-of-way category, by means other than the use of a fumigant. Excludes any pests within a structure.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.

5. Aquatic: pest management, including weeds, in standing or running water.
6. Fumigation: pest management using fumigants; except as provided in the wood preservation category.
7. Wood preservation: application of pesticides, including fumigants labeled for use on utility poles or railroad ties, directly to structural components of wood or wood products, to prevent or manage wood degradation by wood-destroying organisms including fungi and bacteria, which are not part of an existing structure.

**Historical Note**

New Section recodified from R4-29-102 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-103. Fees; Charges; Exemption**

- A. Beginning March 1, 2019 through June 30, 2022, a person shall pay the following application and renewal fees for licensure, certification, and registration:
  1. For an applicator:
    - a. Applicator certification, \$55.
    - b. Applicator certification broadening application, \$0.
    - c. QA certification, \$75.
    - d. QA certification broadening application, \$15.
  2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$35.
    - c. Registration broadening, \$15.
    - d. Temporary qualifying party registration, \$75.
  3. For a business:
    - a. Business license, \$185.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$35 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.
    - c. Branch supervisor registration at a different time than branch office registration, \$15.
- B. Beginning July 1, 2022, a person shall pay the following application and renewal fees for licensure, certification, and registration:
  1. For an applicator:
    - a. Applicator certification, \$75.
    - b. Applicator certification broadening application, \$0.
    - c. QA certification, \$100.
    - d. QA certification broadening application, \$25.
  2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$50.
    - c. Registration broadening, \$25.
    - d. Temporary qualifying party registration, \$100.
  3. For a business:
    - a. Business license, \$250.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$50 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.

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- c. Branch supervisor registration at a different time than branch office registration, \$25.
- C. A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.
- D. In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.
- E. A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.
1. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.
  2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.
- F. A business licensee shall pay the following TARF fees:
1. Electronic submissions, \$2;
  2. Electronic final grade treatment TARF submissions, \$0;
  3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
    - a. Performed the pretreatment or new-construction treatment of the main structure,
    - b. Filed a TARF regarding the pretreatment or new-construction treatment,
    - c. Has the structure under warranty, and
    - d. Treats the abutting addition under the terms of the site warranty;
  4. All paper submissions, \$8; and
  5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- G. If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.
- H. PMD employees are exempt from the applicator and examination fees listed in this Section.
- I. An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
1. The PMD shall void any approval of the application or renewal.
  2. The applicant shall pay any financial institution fee incurred by the PMD.
  3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
  4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- J. The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- Historical Note**
- New Section recodified from R4-29-103 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2). Section amended by final expedited rulemaking at 25 A.A.R. 720, effective February 25, 2019 (Supp. 19-1). Section amended by final expedited rulemaking at 27 A.A.R. 1007, with an immediate effective date of June 8, 2021 (Supp. 21-2).
- R3-8-104. Pest Management Division Council**
- A. A five-member Pest Management Division Council is established to assist and make recommendations to the director regarding the administration and implementation of A.R.S. Title 3, Chapter 20.
- B. The members shall meet the following qualifications:
1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience.
    - a. At least one of these three members shall be a business licensee who has five or fewer applicators.
    - b. For one of these three members, first priority shall be given to a business licensee or QP based outside of Maricopa and Pima Counties and secondary priority shall be given to a business licensee or QP who is not based outside of those counties but is associated with a business that has an office in Arizona outside of those counties. If there are no qualified first or secondary priority applicants, the Director may appoint any business licensee or QP with a minimum of five years of pest management experience.
  2. One member shall be a representative of a political subdivision.
  3. One member shall be a public member who does not provide pest management services or work for a business licensee.
- C. Members shall serve three year staggered terms. Members shall not serve consecutive terms, except that a member who is appointed to fill a vacancy may serve the unexpired term that fills the vacancy plus one regular term. A member shall be ineligible for reappointment for three years.
- D. The office of a member shall be deemed vacant under any of the following circumstances:
1. The member no longer satisfies the qualification in subsection (B).
  2. The member is unable to perform the duties of the office.
  3. The absence of the member from three consecutive Committee meetings if the absences have not been excused by the Committee.
- E. The Committee shall annually select a chairman and vice-chairman from among its members.
- Historical Note**
- New Section recodified from R4-29-104 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-105. Reserved**

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**Historical Note**

New reserved Section recodified from R4-29-105 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-106. Reserved****Historical Note**

New reserved Section recodified from R4-29-106 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-107. Licensing Time-frames**

- A.** Overall time-frame. The PMD shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substantive review time-frames, begins when the PMD receives an application.
- B.** Administrative completeness review time-frame.
1. During the administrative completeness review time-frame, the PMD shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the PMD shall specify in the notice what information is missing. If the PMD does not provide notice to the applicant within the administrative completeness review time-frame, the PMD shall deem the application complete.
  2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the PMD receives the information.
  3. If an applicant fails to submit the missing information before expiration of the completion request period, the PMD shall consider the application withdrawn and close the file. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- C.** Substantive review time-frame.
1. The substantive review time-frame listed in Table 1 begins when an application is administratively complete

or at the end of the administrative completeness review time-frame in Table 1, whichever occurs first. If the PMD determines during the substantive review that additional information is needed, the PMD shall send the applicant a comprehensive written request for additional information.

2. Both the substantive review and overall time-frames are suspended from the date of the PMD's request until the date that the applicant receives the additional information. The applicant shall submit the additional information within the additional information period listed in Table 1.
  3. If the applicant fails to provide the additional information within the additional information period in Table 1, the PMD shall consider the application withdrawn and close the application. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- D.** Within the overall time-frame listed in Table 1, the PMD shall:
1. Deny a license or approval to an applicant if the PMD determines that the applicant does not meet all the substantive criteria required by the PMD's statutes and this Chapter; or
  2. Grant a license or approval to an applicant if the PMD determines that the applicant meets all the substantive criteria required by the PMD's statutes and this Chapter.
- E.** If the PMD denies a license or approval under subsection (D)(1), the PMD shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
  2. The applicant's right to seek a fair hearing to challenge the denial; and
  3. The time for appealing the denial.

**Historical Note**

New Section recodified from R4-29-107 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

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Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Applicant Response to Completion Request	Substantive Completeness Review	Applicant Response to Additional Information Request	Overall Time-frame
Applicator	A.R.S. § 3-3614					
New	R3-8-203	30	45	60	360	90
Renewal	R3-8-208	30	45	60	15	90
Broaden	R3-8-210	30	45	60	360/ ∞*	90
Qualified applicator (QA)	A.R.S. § 3-3614					
New	R3-8-204	30	45	60	360	90
Renewal	R3-8-208	30	45	60	15	90
Broaden	R3-8-210	30	45	60	360	90
Qualifying party (QP)	A.R.S. § 3-3616					
New	R3-8-205	30	45	60	90	90
Renewal	R3-8-208	30	45	60	15	90
Broaden	R3-8-210	30	45	60	90	90
Temporary	R3-8-205	10	10	10	15	20
Business	A.R.S. § 3-3615; R3-8-202; R3-8-208; R3-8-209	30	45	60	15	90
Branch Office	A.R.S. § 3-3617; R3-8-206	30	45	60	15	90
Branch supervisor	A.R.S. § 3-3617					
New	R3-8-206	30	45	60	90	90
Renewal	R3-8-208	30	45	60	15	90
Continuing Education Approval	R3-8-216	20	20	55	15	75

\* ∞ (Infinity) response refers to examination scores for current applications only.

**Historical Note**

New Article 1, Table 1 recodified from 4 A.A.C. 29, Article 1, Table 1, at 23 A.A.R. 1976, effective June 30, 2017; Table 1 amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-108. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-108 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION**

**R3-8-201. Activities that Require a License; Exemptions**

- A. Business license. A person doing an activity defined as the business of pest management shall first possess a valid business license, unless the person is:
  - 1. A political subdivision;
  - 2. Acting on behalf of a business licensee or political subdivision; or
  - 3. Otherwise exempt by this Chapter or the PMD’s statutes.
- B. Qualifying party registration. A business licensee or school district shall only do an activity defined as the business of pest management if the business licensee or school district has a registered qualifying party. The business licensee or school district shall only provide pest management services in a certification category if the qualifying party is registered in that certification category.
- C. Applicator licensure.
  - 1. An individual who provides pest management services shall be a certified applicator and only provide pest management services in a certification category for which the applicator is currently certified except as provided under

- subsections (C)(2) and (C)(3) or as otherwise exempt by this Chapter or the PMD’s statutes.
- 2. A certified applicator desiring to work in a category for which the applicator is not certified shall become certified in the category within 30 calendar days after beginning work in that category and shall be supervised as provided in subsection (C)(3)(c) while working in that category.
- 3. An individual may provide pest management services on behalf of a business licensee without being a certified applicator if the individual:
  - a. Is registered as an applicator of the business licensee under R3-8-207;
  - b. Has been registered as an applicator of the business licensee for not more than 90 calendar days out of the last 365 days; and
  - c. Is supervised by a certified applicator who:
    - i. Is certified in the category for which supervision is provided;
    - ii. Provides immediate supervision when the individual performs pest management services in the wood-destroying organism treatment, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit; and
    - iii. Provides direct supervision when the individual performs pest management services not covered by subsection (C)(3)(c)(ii).

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4. An individual may not provide pest management services at a school, child care facility, health care institution, or food-handling establishment unless the individual is a certified applicator in the certification category for which services are being provided.
  5. An individual using an animal to assist with identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations shall be a certified applicator in the certification category for which services are being provided.
- D.** Applicator registration. An applicator may not provide pest management services on behalf of a business licensee or political subdivision unless the applicator is registered as an applicator of the business licensee or political subdivision pursuant to R3-8-207.
- E.** Exemptions. A person is not required to be licensed who:
1. Provides general information about a label or labeling, the identification or management of a pest, integrated pest management or the use of a registered pesticide; does not directly or indirectly charge for the information; and does not make an on-site recommendation.
  2. Performs sales work that does not include:
    - a. Identifying on-site infestations or making inspections for the purpose of identifying or attempting to identify infestations;
    - b. Making written or oral inspection reports or on-site recommendations with respect to infestations; or
    - c. The application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations.
  3. Is an authorized representative of any educational institution engaged in research in the study of pest management and does not provide pest management services for hire.
  4. Is a certified home inspector and documents evidence of wood-destroying organisms on a home inspection, but does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.
  5. Only uses, applies or installs home improvement articles, such as insulation, caulk and paint, that are pre-incorporated with a pesticide.

**Historical Note**

New Section recodified from R4-29-201 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-202. Business License**

- A.** An applicant for a business license shall submit the following information on a form obtained from the PMD:
1. About the business:
    - a. Business name;
    - b. Name and form of business organization;
    - c. Names of the following persons authorized to act on behalf of the business:
      - i. Owner if a sole proprietorship;
      - ii. Managing or general partner if a partnership;
      - iii. President and other authorized officers if a corporation;
      - iv. All the managers or members if a limited liability company; or
      - v. Person authorized to make decisions for the business if any other type of business form;
      - vi. Names of all principals of the business including all individuals or other corporations or partnerships that own at least ten percent interest of the business.
    - c. Telephone number;
    - d. Physical address;
    - e. Mailing address, if different from physical address
    - f. E-mail address; and
    - h. Chemical storage address.
  2. Daytime telephone number of individuals identified under subsection (A)(1)(c);
  3. Name of the qualifying party; and
  4. The dated signature and title of an authorized representative of the business affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit:
1. The fee specified in R3-8-103;
  2. The proof of financial security required by A.R.S. § 3-3615;
  3. The name and physical address of the statutory agent of the business; and
  4. A copy of the Articles of Incorporation or Organization, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization.
- C.** A business cannot be licensed without a registered qualifying party.
- D.** If the PMD determines there may be cause to deny a license to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- E.** A business license expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial licensure; and
  2. Renewable for one or two years, depending on the renewal period selected by the applicant.
- F.** A business license may not be transferred except in accordance with R3-8-209 and may not be renewed beyond the expiration of the registration for the business's qualifying party.
- G.** If an applicant's proof of financial security includes an insurance policy which provides for a deductible in excess of one percent of the total financial security for each occurrence, the applicant shall provide other evidence of financial security for the excess deductible amount as required by A.R.S. § 3-3615. Financial security in the following forms will be acceptable, provided that the nature of the security provides adequate protection for persons who may suffer bodily injury or property damage as a result of the operations of the applicant:
1. Liability insurance, self-insured retention or surety bond issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state;
  2. Bank statement evidencing a deposit of money in an amount equal to, or greater than, the excess deductible amount; or
  3. Certified Check in an amount equal to, or greater than, the excess deductible amount.

**Historical Note**

New Section recodified from R4-29-202 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-203. Applicator Certification**

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- A.** Application. An applicant for applicator certification shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full name;
  2. Applicator certification number, if any;
  3. Home address;
  4. Mailing address, if different from the home address;
  5. Telephone number;
  6. E-mail address;
  7. Date of birth;
  8. Social Security number;
  9. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
  10. Name of employer, if any;
  11. Employer's business license number, if applicable;
  12. Employer's telephone number, if applicable; and
  13. The applicant's dated signature affirming that the information provided is true and correct.
  14. Information and documentation concerning lawful presence required by A.R.S. § 41-1080.
- B.** An applicator shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:
1. Murder involving the death of a law enforcement officer.
  2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
  3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.
- C.** Examination. An applicant shall take and pass the certification examinations as provided in R3-8-211 in order to become certified.
- D.** An applicant for initial certification shall be at least 18 years of age.
- E.** If the PMD determines there may be cause to deny certification to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- F.** Certification. Applicator certification is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial certification,
  2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
  3. Renewed for all certification categories for the same renewal period, and
  4. The responsibility of the individual to whom it is issued.
- Historical Note**
- New Section recodified from R4-29-203 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-204. Qualified Applicator Certification**
- A.** Before applying for QA certification, an applicant shall fulfill the experience requirement for each category.
- B.** Application. An applicant for QA certification shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full name;
  2. Applicator certification number, if any;
  3. QA certification number, if any;
  4. Home address;
  5. Mailing address, if different from the home address;
  6. Telephone number;
  7. E-mail address;
  8. Date of birth;
  9. Social Security number;
  10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
  11. Name of employer, if any;
  12. Employer's business license number, if applicable;
  13. Employer's telephone number, if applicable;
  14. Certification categories for which application is made; and
  15. The applicant's dated signature affirming that the information provided is true and correct.
  16. Information and documentation concerning lawful presence required by A.R.S. § 41-1080, if not on file.
- C.** Experience. An applicant shall possess one of the following qualifications:
1. Certification as an applicator for 24 months within the ten years preceding the application in the category applied for.
  2. Certification as an applicator for 12 months within the ten years preceding the application and either:
    - a. Successful completion of 12 semester hours or its equivalent within the 10 years preceding the application in pest management courses directly related to each category applied for; or
    - b. A Bachelor's degree in agricultural sciences, biological sciences, or pest management with 12 semester hours or its equivalent in pest management courses directly related to each category applied for.
  3. Twenty four months of verifiable experience in the business of pest management, in another State where licensure was not required, within the ten years preceding application directly related to the category applied for.
- D.** For an individual who applies for QA certification within one year of honorable separation from active military duty, the time periods "preceding the application" in subsection (C) are tolled during the term of active military duty.
- E.** A QA shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:
1. Murder involving the death of a law enforcement officer.
  2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
  3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.
- F.** PMD review.
1. After notification by the PMD that the applicant is eligible for certification, the applicant may schedule and take the certification examinations described under R3-8-211.
  2. If the PMD determines there may be cause to deny certification to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- G.** Examination. An applicant shall take and pass the certification examinations as provided in R3-8-211 in order to become certified.
- H.** Certification. QA certification is not transferable, expires on May 31, and is:

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1. Issued with an expiration in the following calendar year as an initial certification,
  2. Renewable for one or two years, depending on the renewal period selected by the applicant,
  3. Renewed for all certification categories for the same renewal period, and
  4. The responsibility of the individual to whom it is issued.
- I.** For the purposes of this Section, pest management courses means courses in entomology, zoology, vertebrate management, plant pathology, agronomy, general horticulture, plant biology or botany, biochemistry, organic or inorganic chemistry, the eradication or management of weeds, toxicology, the environmental impact of pesticides, or any combination thereof.

**Historical Note**

New Section recodified from R4-29-204 at 23 A.A.R.

1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-205. Qualifying Party Registration; Temporary Qualifying Party Registration**

- A.** An applicant for registration as a QP shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full Name;
  2. QA certification number;
  3. Certification categories to be registered;
  4. Name, and license number if applicable, of the business or school district for which the applicant will act as the QP; and
  5. Dated signature of the applicant affirming that the information provided is true and correct;
- B.** An individual may only register as a QP in categories for which the individual possesses QA certification.
- C.** A certified applicator who is the representative of a business licensee or school district may register as a temporary QP if the QP has become disassociated with the business licensee or school district within the last 45 days. A certified applicator may only register as a temporary QP in the categories for which both the former QP was registered and the certified applicator is certified.
- D.** An applicant for registration as a temporary QP shall submit the fee specified in R3-8-103 and:
1. The information required in subsection (A), except subsection (A)(2);
  2. The applicant's applicator certification number;
  3. Written confirmation signed by the business licensee, school district, or former QP indicating that the former QP has become disassociated with the business licensee or school district; and
  4. A written statement signed by the business licensee or school district that:
    - a. The business licensee or school district has not operated in the business of pest management for more than five business days since the disassociation in the categories for which the disassociated QP was registered; and
    - b. The business licensee or school district wants the certified applicator to act as a temporary QP.
- E.** A business licensee or school district shall not use a temporary QP to qualify the business or school district in a category for more than 180 days in any 12 month period.
- F.** Registration.
1. QP registration is not transferable, expires on May 31, and is:

- a. Issued with an expiration in the following calendar year as an initial registration,
  - b. Renewable for one or two years, depending on the renewal period selected by the applicant, and
  - c. Renewed for all registration categories for the same renewal period.
2. Temporary QP registration is not transferable, is valid for 90 calendar days and may be renewed once for the business license.
  3. A QP or temporary QP may only register to qualify one business licensee or school district except as provided in subsection (F)(4).
  4. A QP for school districts shall separately register as a QP for each school district served, but may not register as a QP for more than one school district without approval from the director pursuant to R3-8-402(C).

**Historical Note**

New Section recodified from R4-29-205 at 23 A.A.R.

1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-206. Branch Office Registration; Branch Supervisor Registration**

- A.** A business licensee may not do business from a branch office unless the branch office and a branch supervisor are registered with the PMD.
- B.** To register a branch office, the business licensee shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. The business licensee's name and licensee number.
  2. About the branch office:
    - a. Full name of branch supervisor;
    - b. Branch supervisor's applicator certification number;
    - c. Telephone and fax numbers;
    - d. Physical address;
    - e. Mailing address, if different from physical address;
    - f. E-mail address; and
    - g. Chemical storage address; and
  3. The dated signature of an authorized representative of the business licensee.
- C.** A branch office shall do business in the name of the business licensee only.
- D.** To register as a branch supervisor, the applicant shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full name,
  2. Applicator certification number,
  3. Business name and license number,
  4. Physical and mailing address of branch office where the applicant will be the supervisor,
  5. Branch office telephone and fax numbers,
  6. Dated signature of the applicant affirming that the information provided is true and correct, and
  7. Dated signature of an authorized representative of the business licensee.
- E.** A branch supervisor may only register to supervise a branch office at one physical location.
- F.** Registration. Registration as a branch office or branch supervisor is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial registration, and
  2. Renewable for one or two years, depending on the renewal period selected by the applicant.

**Historical Note**

New Section recodified from R4-29-206 at 23 A.A.R.

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1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-207. Applicator Registration**

- A.** Every applicator of a business licensee or political subdivision shall be registered with the PMD as an applicator for that business licensee or political subdivision before providing pest management services for the business licensee or political subdivision. This requirement is in addition to applicator certification requirements.
- B.** To register an applicator, a person shall submit the fee specified in R3-8-103 and the following information about the applicator on a form obtained from the PMD:
1. Full name;
  2. Name, and license number if applicable, of the business licensee or political subdivision;
  3. For an applicator of a business licensee, identification of the primary or branch office where the applicator's pest management records will be kept;
  4. For a certified applicator, the applicator's certification number;
  5. For an uncertified applicator, the applicator's:
    - a. Home address;
    - b. Mailing address, if different from the home address;
    - c. E-mail address;
    - d. Telephone number;
    - e. Date of birth;
    - f. Social Security number; and
  6. Dated signature of the applicant affirming that the information provided is true and correct.
- C.** An uncertified applicator shall be at least 18 years of age.
- D.** Applicator registration is valid from the date the PMD receives all the information required under subsection (B) and the registration fee.
- E.** Applicator registration is non-transferable and expires on May 31.
- F.** A business licensee and QP are jointly responsible for ensuring compliance with this Section.
- G.** The director shall assess a business licensee with a \$150 civil penalty for each unregistered applicator.

**Historical Note**

New Section recodified from R4-29-207 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-208. License, Certification and Registration Renewal**

- A.** An application to renew a business license, applicator or QA certification, or qualifying party, branch office, branch supervisor, or applicator registration is due May 1 of the year the license, certification, or registration expires. Failure to receive a renewal application does not justify a failure to timely renew.
- B.** An applicant for renewal shall submit the following information on a form obtained from the PMD:
1. All renewals:
    - a. A change in physical address and mailing address, if any;
    - b. E-mail address;
    - c. Telephone number;
    - d. Dated signature of the applicant affirming that the information provided is true and correct; and
    - e. License specific information described in this subsection, if applicable.
  2. Business license:
    - a. Full name of the qualifying party in each category for which the business provides pest management services, and
    - b. Proof that the licensee still meets the financial security requirement in A.R.S. § 3-3615; and
    - c. A change in the chemical storage address, if any.

3. Applicator and QA certification:
    - a. Name of employer, if any;
    - b. A statement whether the applicant has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and
  4. Applicator registration: The names and if applicable certification numbers of all of the business licensee's current applicators.
- C.** An applicant for renewal shall select a one or two year renewal period and shall pay the renewal fee listed in R3-8-103 for each year of renewal.
- D.** CEU requirements. The director shall not renew a certification unless, prior to the expiration of the current certification, the applicant obtains the CEUs required by R3-8-215.
- E.** Expired license, certification, or registration.
  1. An applicant who submits a complete renewal application, including the renewal fee, after the expiration of the license, certification, or registration shall pay the late fee listed under R3-8-103 as a penalty in addition to the renewal fee.
  2. An applicant may renew an expired applicator or QA certification without retaking the written examinations provided the applicant has satisfied the CEU requirements, during their most recent certification period.
  3. A certification that has been expired for more than 11 months may not be renewed. The former certificate holder may apply as a new applicant and shall retake and pass the applicable certification examinations.
  4. A business license that has been expired for more than one year may not be renewed. The former licensee may apply as a new applicant.
  5. Notwithstanding subsections (E)(1) through (4), an applicant who fails to renew because the applicant is on active military duty may obtain the continuing education required under R3-8-215 and apply for renewal within one year of honorable separation from active military duty without paying a late fee.
- F.** Renewal effective date.
  1. If an applicant submits a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license certification, or registration does not expire until:
    - a. The renewal has been approved; or
    - b. In the case of denial or new limits on the license, certification, or registration, the last day for seeking review of the PMD order or later date fixed by a court.
  2. If an applicant fails to submit a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license, certification, or registration expires as provided in this Article and is not valid until the PMD has approved the renewal application. A business, branch office, or applicator with an expired license, registration, or certification may not provide pest management services or otherwise engage in the business of pest management. A qualifying party with an expired registration may

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not qualify a business licensee or school district. A branch supervisor with an expired registration may not supervise a branch office.

**G. Surrendering a certification or license.**

1. An applicator or business licensee may surrender their certification or license at any time, except for the following situations:
  - a. The applicator or business licensee is currently the subject of an investigation; or
  - b. The applicator or business licensee owes civil penalties or termite action registration form fees.
2. An applicator or business licensee that has surrendered their certification or license is not absolved of any termite action registration form fees or civil penalties based on actions or omissions that occurred prior to surrendering their certification or license.
3. The Office shall not refund any certification or licensing fees paid prior to the applicator or business license surrendering their certification or license.

**Historical Note**

New Section recodified from R4-29-208 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-209. Change in Business Licensee**

- A.** Transfer to spouse. A business license may be transferred to the licensee's spouse without a fee by submission of a Business License Entity Change Application if the licensee's spouse submits evidence of marriage to the licensee, keeps the same business name for the remainder of the licensee period and agrees to honor all of the licensee's customer contracts and warranties.
- B.** Transfer to new entity. A person may request a transfer of a business license to a new entity without a fee by submitting a Business License Entity Change Application if:
  1. The owners of the current business licensee own a majority of the new entity,
  2. The new entity keeps the same business name as the current business licensee for the remainder of the licensing period,
  3. The new entity agrees to honor all customer contracts and warranties provided by the current business licensee, and
  4. The current business licensee and the new entity are not the same form of entity.
- C.** When a business license is transferred under subsection (A) or (B), the new licensee shall be responsible for any outstanding fees or penalties owed to the PMD and for any disciplinary action taken by the PMD as a result of violations of this Chapter or the PMD's statutes by the former licensee.
- D.** Except as provided in subsections (A) and (B), a change in ownership of a licensed sole proprietorship requires a new business license.
- E.** If, through a change in ownership, a licensed business's office becomes a branch office of another licensed business, the new owner shall notify the PMD and comply with R3-8-206.
- F.** A business licensee shall report any change in the principals of the business to the PMD within 30 days. Principal means a person who owns at least a 10 percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.
- G.** If a business licensee changes the name of the business, the licensee shall provide the following information on a Business Name Change Application submitted to the PMD prior to the change:
  1. Name of business entity;

2. Current business name;
  3. Business license number;
  4. New business name requested;
  5. Copy of the Registered Trade Name Certificate, amended Articles of Organization or Incorporation, amended Certificate of Limited Partnership, or amended Statement of Partnership Authority or Qualification showing the new name; and
  6. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.
- H.** If a business licensee changes the form of the business, the licensee shall provide the following information on a Business Entity Change Application submitted to the PMD within 30 days of the change:
1. Name of licensed business entity;
  2. Business name and license number;
  3. Name and form of new business entity;
  4. Names of the following persons authorized to act on behalf of the new business entity:
    - a. Owner if a sole proprietorship,
    - b. Managing or general partner if a partnership,
    - c. President and other authorized officers if a corporation,
    - d. All the managers or members if a limited liability company, or
    - e. Person authorized to make decisions for the business if any other type of business form;
  5. Copy of the new business entity's Articles of Organization or Incorporation, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization;
  6. As applicable, the Articles of Merger or Consolidation, Statement of Merger, or approved partnership conversion; and
  7. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

**Historical Note**

New Section recodified from R4-29-209 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-210. Certification Broadening**

- A.** To broaden an applicator certification, the applicant shall:
  1. Submit the application described in R4-29-203,
  2. Submit the fee required under R4-29-103, and
  3. Take and pass the certification examination for the specific category in which broadening is sought.
- B.** A QA is eligible to broaden a QA certification only if, in the category in which broadening is sought, the QA has a valid applicator certification or a qualification listed in R4-29-204(C).
- C.** To broaden a QA certification, the QA shall:
  1. Submit the application described in R4-29-204 and indicate on the application the category in which broadening is sought,
  2. Submit the fee required under R4-29-103,
  3. Submit the evidence of experience required under R4-29-204(C) for the category in which broadening is sought except as provided in subsection (D) of this Section, and
  4. Take and pass the certification examination for the specific category in which broadening is sought.

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- D.** Experience exemptions. A QA may become certified without meeting the experience requirement of R4-29-204(C) in the categories of:
1. Right-of-way or ornamental and turf if the individual has QA certification in the category of industrial and institutional, wood-destroying organism treatment, ornamental and turf, or right-of-way.
  2. Wood-destroying organism management if the individual has QA certification in the industrial and institutional category.
  3. Wood preservation if the individual has QA certification in the wood-destroying organism treatment category.
1. Responding to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 3, Chapter 20.
  2. Identifying for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
  3. Demonstrating that all applicators are properly certified.
- B.** The political subdivision shall annually submit the following information about the responsible individual(s) during the month of May on a form obtained from the Director or the Director's designee:

1. Full name;
2. Physical address;
3. Mailing address, if different from the physical address;
4. E-mail address;
5. Telephone number;
6. Dated signature of the responsible individual(s) affirming that the information provided is true and correct.

- C.** If the political subdivision changes its responsible individual(s), the political subdivision shall provide the information about the new responsible individual(s) listed in subsection (B) to the Director within 30 days.
- D.** School districts are exempt from this Section.

**Historical Note**

New Section recodified from R4-29-213 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-211. Certification Examination**

- A.** An applicant for applicator certification or QA certification shall make arrangements to take the certification examinations by contacting the PMD or the examination service or testing vendor with which the PMD has contracted.
- B.** The core and category-specific examinations may measure knowledge and understanding of the following content areas:
1. Pesticide label and labeling and pesticide types and formulations;
  2. Pest identification, life cycles, and habits;
  3. Safety and environmental factors relating to the use, handling, storage, and disposal of pesticides;
  4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and
  5. Laws and rules.
- C.** To be certified, an applicant shall score at least 75 percent on the general standards ("core") examination and on the category-specific examination in each category for which the applicant seeks certification.
- D.** An applicant who fails an examination may not retake the examination for at least seven days or more than two times in a 6-month period.
- E.** An examination score is only valid for the earlier of 12 months from the date of application for certification or 12 months from the examination date.
- F.** The PMD shall void the examination score and deny the application of an applicant that the PMD determines cheated on an examination. The applicant may not reapply for one year.

**Historical Note**

New Section recodified from R4-29-211 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-212. Reciprocity**

Notwithstanding the examination requirements in R4-29-203(C), R4-29-204(G), and R4-29-211, the director may waive the examination requirements in whole or in part for an individual who is certified as an applicator pursuant to A.R.S. Title 3, Chapter 2 or by another state.

**Historical Note**

New Section recodified from R4-29-212 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-213. Political Subdivision Responsible Individual**

- A.** A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements, shall designate an individual or individuals responsible for the following:

**Historical Note**

New Section recodified from R4-29-215 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-216. Continuing Education Approval**

- A.** Only continuing education courses approved by the PMD may be used to satisfy the continuing education requirement in R3-

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- 8-215. The PMD shall approve a continuing education course only if the course addresses:
1. Pesticide labels and labeling;
  2. Safety, environmental factors, and consequences;
  3. Pesticide use and disposal;
  4. Laws and rules related to pest management and the business of pest management;
  5. Application techniques;
  6. Calibration and dilution;
  7. Equipment;
  8. Pest identification;
  9. Life cycles and habits;
  10. Calculation and measurements;
  11. New pest management technologies;
  12. Integrated pest management; or
  13. Licensee responsibilities.
- B.** A person who wishes to have the PMD determine whether a course qualifies for CEU credit shall submit the following information to the PMD:
1. Type of continuing education listed under subsection (A);
  2. Name of continuing education provider;
  3. Address and telephone number of continuing education provider;
  4. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
  5. Brief description of the information covered within each subject;
  6. Brief biography of the presenter, demonstrating the presenter's qualifications;
  7. Whether a fee is charged for attending the course;
  8. Date and location of each session;
  9. Whether the course is open to the public;
  10. Number of continuing education units sought;
  11. Previous continuing education number, if any; and
  12. Dated signature of applicant;
- C.** The provider of an approved continuing education course shall:
1. Enter attendance information using the PMD's on-line continuing education reporting tool within 10 days after the date of the continuing education course, and
  2. Maintain a copy of the verification of attendance and original sign-in sheet that lists the attendees' names and certification numbers for two years.
  3. Allow PMD and Department employees to attend the course and review course materials without charge, except that the provider has no obligation to provide food to the employees that is made available for paying attendees.
  4. Notify PMD in writing of the date, time and place of each continuing education course at least two weeks before each course. In-house and online courses are exempt from this requirement.
- D.** Unless otherwise indicated in the notice of approval, the PMD's approval of a continuing education course is valid for two years.
- E.** Approval of a continuing education course is not renewable. To reapply for approval of a continuing education course, a person shall comply with the requirements of subsection (B).
- F.** The provider of an approved continuing education course shall provide notice and updated information to the PMD within 10 days after the subject matter or instructor of the course changes.
- G.** To evaluate the effectiveness of a continuing education course, the PMD may monitor an approved continuing education course at no cost.
- H.** The PMD shall revoke its approval of a continuing education course if the PMD determines that the course fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the PMD's statutes and this Chapter.
- I.** The PMD may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the PMD modifies the number of CEUs earned, the PMD shall send a letter of modification to the course organizer, who shall be required to inform all individuals who attended the course.

**Historical Note**

New Section recodified from R4-29-216 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**ARTICLE 3. PEST MANAGEMENT****R3-8-301. Using Pesticides and Devices**

- A.** An applicator shall use only a pesticide that is currently registered for use by the Department or was registered by the Department and does not have a passed EPA end use date.
- B.** An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:
1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;
  2. Provides a pest management service or handles a pesticide without wearing clothing and using the personal protective equipment required by the label or labeling to protect the applicator from pesticide exposure;
  3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicator, animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
  4. Uses a pesticide in a food-handling establishment that the label or labeling recommends not be used in a food-handling establishment; and
  5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.
- C.** While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the tank fill opening or is equipped with an effective anti-siphoning device.
- D.** An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.
- E.** An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted use only if the applicator is certified or working under the immediate supervision of an applicator certified in the category for which the restricted-use pesticide is applicable.
- F.** An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling directions and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator

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shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.

- G. An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the Department and the pesticide labeling. The applicator shall have in the applicator's possession at the time of the application both the Special Local Need labeling and the EPA section 3 label and labeling.
- H. If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the PMD's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.
- I. If there is a conflict between any provision in this Section and labeling instructions, an applicator shall follow the more specific instruction.

**Historical Note**

New Section recodified from R4-29-301 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-302. Storing and Disposing of Pesticides and Devices**

- A. An applicator shall store and dispose of a pesticide or device in a manner consistent with its label and labeling.
- B. An applicator shall store a pesticide in a closed container that is free from corrosion, leakage, or pesticide contamination on the outside of the container and properly labeled.
- C. An applicator shall ensure that a service container bears a durable and legible specimen label with the following information:
  1. The name, address, and telephone number of the business licensee or political subdivision;
  2. The common chemical or trade name of the principal active ingredients;
  3. The EPA registration number;
  4. The strength of the concentrate or dilution expressed as a percentage of active ingredients;
  5. Any signal word required on the label; and
  6. The phrase "KEEP OUT OF REACH OF CHILDREN."
- D. An applicator shall not place words or markings on a service container or on the label affixed to the service container that are unrelated to the pesticide in the service container, except for markings related to a method of tracking the product.
- E. If the label affixed to a pesticide container becomes lost or damaged, an applicator shall attach a specimen label to the pesticide container.
- F. An applicator shall replace a damaged container, other than a fumigant container, with an identically labeled container or a properly labeled service container.
- G. Application equipment from which a pesticide is directly discharged and in which the pesticide is not stored is not subject to the labeling requirements of this Section.
- H. An applicator shall not store a pesticide in a manner which food, beverage, feed, drugs, cosmetics, eating utensils, or tobacco products can be contaminated.
- I. An applicator shall not store a pesticide in a container that was used for food, beverage, feed, drugs, or cosmetics, or which by size, shape, or marking could be confused as being a food, beverage, feed, drug, or cosmetic.
- J. An applicator shall not store a fumigant within a residence, office or cab of a vehicle.
- K. An applicator shall ensure that a pesticide in an original or service container, an empty pesticide container that has not been prepared for disposal in accordance with its label, or a return-

able or reusable pesticide container is kept in a locked storage space when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.

- L. An applicator shall ensure that a pesticide in portable application equipment is kept locked when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.
- M. To prevent damage during transit, an applicator shall ensure that a pesticide container is secured in a locked storage space while the pesticide container is transported on a service vehicle.

**Historical Note**

New Section recodified from R4-29-302 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-303. Pesticide and Device Storage Area**

- A. A business licensee or political subdivision shall provide a pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.
- B. A business licensee or political subdivision shall secure the storage area required under subsection (A) from unauthorized entry by equipping its entrance or access with a lock.
- C. Immediately after storing a pesticide, a business licensee or political subdivision shall conspicuously post a sign at the entrance or access to a non-vehicle storage area and on a vehicle storage area indicating there is a pesticide, chemical, or poison stored inside.
- D. A business licensee or political subdivision shall provide sufficient ventilation to the outside of the storage area required under subsection (A) to prevent build-up of odors and preclude chemical injury to an individual or animal.
- E. A business licensee or political subdivision shall provide the following in or immediately adjacent to the storage area required under subsection (A), including a storage area on a service vehicle:
  1. Electric or battery-powered lighting that is sufficient to read a pesticide label;
  2. Fully charged and operational fire extinguisher or fire suppression system appropriate to each pesticide stored in the area;
  3. Emergency medical information including the telephone number of the state or local poison control center;
  4. Material capable of absorbing a spill or leak of at least one gallon;
  5. Specimen label and SDS for each pesticide stored in the area; and
  6. Washing facilities that include at least one gallon of fresh water, soap, and towels.

**Historical Note**

New Section recodified from R4-29-303 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-304. Devices Exempt from Licensure and Registration; Advertising**

- A. The following devices are not subject to the licensure and registration requirements of this Chapter or the PMD's statutes:
  1. Physical barriers used to remove or prevent infestation by pests;
  2. Equipment used for the physical removal of pests or the habitat of pests;
  3. Mechanical equipment used for the physical removal of weeds and other vegetation;
  4. Mechanical traps used without a pesticide;

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5. Installation equipment used for home improvement or modifications;
  6. Raptors used to control or relocate other birds; and
  7. Fire arms.
- B.** An unlicensed person who engages in the business of pest management, but is exempt from licensure and registration because the person does not apply any pesticides and only uses devices listed in subsection (A) shall prominently display or include the phrase “Not licensed to apply pesticides” in all written and oral advertisements.

**Historical Note**

New Section recodified from R4-29-304 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-305. Equipping a Service Vehicle**

A business licensee or political subdivision shall provide each service vehicle with the following:

1. All equipment and supplies required by the label and labeling to apply properly the pesticides on the service vehicle;
2. A measuring and pouring device compatible with the pesticides on the service vehicle;
3. Protective clothing and safety equipment suitable for use when handling, mixing, or applying the pesticides on the service vehicle;
4. Material capable of absorbing a spill or leak of at least one gallon;
5. A storage container large enough to hold material contaminated by absorbing a spill or leak of pesticides;
6. At least one gallon of clean, drinkable water for each individual using the service vehicle at one time;
7. Uncontaminated change of clothing;
8. Specimen label and SDS for each pesticide on the service vehicle; and
9. A locking storage space designed to prevent a pesticide container from being damaged while in transit.

**Historical Note**

New Section recodified from R4-29-305 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-306. Providing Notice to Customers**

- A.** Immediately following an application, the applicator shall provide a written notice to a customer for whom the applicator provides a pest management service that contains the:
1. Name and address of the customer;
  2. Specific site to which a pesticide was applied;
  3. Date of service;
  4. Target pest or purpose of service;
  5. Trade name of pesticide applied;
  6. EPA registration number of restricted use pesticide applied;
  7. Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations;
  8. Name and certification number of the applicator or if the applicator is uncertified, the name of the uncertified applicator and the name and certification number of the applicator providing supervision; and
  9. Following statement printed in at least an eight-point font: “Warning—Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated, or aerated. For more information, contact [business licensee’s name and business license number

issued by the PMD] at [business licensee’s telephone number].”

- B.** The applicator may provide the notice required by subsection (A) electronically.
- C.** An applicator who provides a pest management service at a school shall comply with the notification requirements in A.R.S. § 3-3606.

**Historical Note**

New Section recodified from R4-29-306 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-307. Performing a Wood-destroying Insect Inspection; WDIIRs**

- A.** Only an applicator certified in the category of wood-destroying organism management, who works under the direct employment of a business license and who has received the training required under A.R.S. § 3-3633 may complete a WDIIR.
- B.** An applicator completing a WDIIR shall inspect all areas of a structure including crawlspaces that are visible or accessible at the time of the inspection. The applicator may use techniques such as non-destructive probing and sounding.
- C.** An applicator completing a WDIIR may exclude from inspection an area that is permanently covered by a floor covering, wall covering, or built-in appurtenance such as a bookcase, cabinet, appliance, equipment, or furniture or that would require removing or marring finish work or moving furniture, appliances, or equipment. The applicator shall note on the WDIIR all areas that are not inspected and the reason the areas are not inspected.
- D.** An applicator completing a WDIIR shall inspect all areas where there is evidence of current or previous infestation and where a condition conducive to infestation exists. A condition conducive to infestation includes:
1. Faulty grade level. If a structure contains a slab or floor that is at or below grade, the existing earth level is considered grade level;
  2. Inaccessible sub-area such as an area with less than 24 inches of clear space between the bottom of a floor joist and grade level;
  3. Excessive cellulose debris. Cellulose debris is excessive when:
    - a. The debris can be raked into a pile of at least one cubic foot,
    - b. A stump or wood imbedded in a footing of the structure is in contact with earth, or
    - c. Firewood or a lumber pile is within six inches of the structure;
  4. Earth-to-wood contact, which involves wood that is part of a structure or that is attached to or securely abuts the structure and is in contact with the ground; or
  5. Excessive moisture or evidence of a moisture condition in or around a structure.
- E.** To verify whether a corrective treatment was performed or a condition conducive to infestation was corrected, an applicator may conduct a supplemental inspection within 30 days after an original inspection. An inspection conducted more than 30 days after an original inspection is not a supplemental inspection.
- F.** An applicator completing a WDIIR may exclude from inspection other structures at the site. The applicator shall note on the WDIIR all structures at the site that are not inspected and the reason the structures are not inspected.
- G.** WDIIRs shall be prepared in accordance with R3-8-501(E).

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**Historical Note**

New Section recodified from R4-29-307 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-308. Performing Wood-destroying Insect Management**

- A.** An applicator shall not perform wood-destroying insect management or fumigation unless the applicator is certified in the category of wood-destroying organism treatment or fumigation, respectively, or working under the immediate supervision of an applicator who is certified in the category of wood-destroying organism treatment or fumigation respectively.
- B.** An applicator shall not perform wood-destroying insect management, issue a treatment proposal, or quote a fee for service until the business licensee that employs the applicator ensures that:
1. An on-site inspection of the property is performed, in accordance with R3-8-307, by a certified applicator meeting the training requirement under A.R.S. § 3-3632(E),
  2. A treatment proposal is prepared, based upon the on-site inspection, on a form approved by the PMD and contains the information required under A.R.S. § 3-3632(B) and (C), and
  3. The treatment proposal is delivered to the person requesting the proposal or treatment, prior to the treatment.
- C.** An applicator shall apply a termiticide only in the quantity, strength, dosage, and manner prescribed on the termiticide label unless otherwise specified by this Chapter or a PMD order.
- D.** Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator performing a pretreatment shall:
    - a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
    - b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
      - i. A penetration or protrusion through the slab;
      - ii. An observable preset for crack or joint control;
      - iii. A formed-up change of grade level;
      - iv. Abutting slabs;
      - v. A bath trap or tear-out;
      - vi. The interior of a foundation or stem wall; or
      - vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
  2. Except as specified in subsection (D)(3) and unless the termiticide label requires more, an applicator shall treat all critical areas during a pretreatment at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot.
  3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
    - a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
    - b. Access to the footer is not possible because of its distance below grade; or
    - c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
    - a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
    - b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
      - i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by treating beyond a depth of four feet,
      - ii. A photograph of the site after the pretreatment but before concrete placement,
      - iii. A written statement from the general contractor concerning the fill material and compaction rating,
      - iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
      - v. A written compaction rating statement from the engineering subcontractor.
  5. If an applicator is advised before concrete is poured that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken, and if the applicator is provided an opportunity to re-treat the disturbed area, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.
  6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
    - a. Name of business licensee;
    - b. Address of business licensee;
    - c. Telephone number of business licensee;
    - d. License number of business licensee;
    - e. Location or address of project;
    - f. Date of pretreatment application;
    - g. Time that application was started (not time that applicator arrived at the site);
    - h. Time that application ended (not time that applicator left the site);
    - i. Trade name of pesticide used;
    - j. Percentage of active ingredient in the pesticide used;
    - k. Number of gallons of chemical preparation applied;
    - l. Square footage of area treated;
    - m. Linear footage of area treated;
    - n. Type of slab construction;
    - o. Name of applicator; and
    - p. Certification number of applicator or, if not certified, the name and certification number of the applicator providing immediate supervision.
  7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."

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8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."
- E.** New-construction treatment for commercial or residential construction.
1. Unless specifically precluded by the termiticide label, an applicator performing a new-construction treatment shall treat all critical areas visible at the time of the treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
    - a. A penetration or protrusion through the slab;
    - b. An observable crack or joint;
    - c. Abutting slabs;
    - d. A bath trap or tear-out;
    - e. The interior of a foundation or stem wall; or
    - f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
  2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth.
  3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
  4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection (D)(6).
  5. An applicator shall comply with subsections (D)(7) and (D)(8) when performing a new-construction treatment.
- F.** Final grade treatment for commercial or residential construction.
1. A business licensee that performs a pretreatment or new-construction treatment shall perform a final grade treatment. The final grade treatment must occur after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
  2. An applicator shall treat the soil along the exterior of foundation walls at a rate of four gallons of chemical preparation per 10 linear feet (unless precluded by label directions) after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
  3. An applicator shall leave a record of the final grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final grade treatment contains the information listed in subsection (D)(6), except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.
- G.** An applicator who performs a pretreatment, new-construction treatment or final grade treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) or the final grade treatment record required under subsection (F) is provided to the business licensee for inclusion in the business licensee's service records.
- H.** A warranty regarding subterranean termite treatment shall only be issued to a builder if the structure received a pretreatment or a new-construction treatment.
- I.** Post-construction treatment for commercial or residential construction.
1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
  2. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.
  3. Unless precluded by label directions, any application to treat the soil along the exterior of foundation walls shall be made at an effective treatment rate of four gallons of chemical preparation per ten linear feet in a trench six inches wide or other method of treatment prescribed by the label to achieve the effective treatment rate.
  4. All post construction treatments shall be made in accordance with the treatment proposal delivered as required under subsection (B). Any deviations to the original proposal shall be redelivered in writing in a revised treatment proposal and shall be approved prior to performing the treatment by the person who requested the original proposal or their authorized agent.

**Historical Note**

New Section recodified from R4-29-308 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-309. Termite Warranties and Retreatments**

- A.** If a business licensee or an employee of a business licensee is advised before concrete is poured that a pretreatment area is disturbed and the continuous chemical barrier is broken and if an opportunity is provided to re-treat the disturbed area or is advised that a new-construction treatment area is disturbed, the business licensee shall ensure that the disturbed area is retreated.
- B.** A business licensee that provides a subterranean termite treatment warranty shall ensure that the effective date of the warranty is the date on which treatment begins.
- C.** If subterranean termites occur in or on a residential or commercial structure within three years after a business licensee first performs a pretreatment or new-construction treatment of the structure, the business licensee shall re-treat the affected area of the structure free of charge in accordance with the label specifications of a termiticide available for use. If subterranean termites occur in or on an addition that does not abut the slab of a residential or commercial structure within three years after a business licensee first performs a pretreatment or new-construction treatment of the non-abutting addition, the business licensee shall re-treat the non-abutting addition free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets pertaining to wood-destroying insect treatment.
- D.** If subterranean termites occur a third time on the exterior of a one or two unit residential structure within three years after a

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business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.

1. As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;
  2. For the purpose of this subsection and subsection (E):
    - a. A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;
    - b. A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and
    - c. A third occurrence means evidence of subterranean termites exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.
- E.** If subterranean termites occur a third time on the interior of a one or two unit residential structure within three years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a residential structure where termite activity originates and that is livable or a garage.
- F.** A business licensee that performs a re-treatment under subsection (C) or (D) or a post-construction treatment under subsection (E) shall not charge the consumer for any expense incurred in providing the re-treatment or post-construction treatment to which the consumer is entitled under this Chapter.
- G.** If a business licensee goes to a structure to perform a re-treatment under subsection (C) or (D) or a post-construction treatment under subsection (E) and determines there is no evidence of subterranean termites, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.
- H.** If a business licensee determines that a re-treatment or post-construction treatment is necessary because the continuous chemical barrier is disturbed, the business licensee may charge the reasonable cost of reestablishing the barrier.
- I.** If a customer refuses a re-treatment or post-construction treatment as described in this Section, access to the customer's property, or to allow drilling in an area where drilling is necessary, the business licensee shall obtain the customer's printed name and dated signature on a document evidencing that the business licensee:
1. Informed the customer of the right to a re-treatment or post-construction treatment at no charge,
  2. Provided the customer with a copy of this Section and the termiticide label requirements,
  3. Provided the customer with the PMD's telephone number, and
  4. Explained to the customer the benefits of having and the detriments of not having a re-treatment or post-construction treatment.

**Historical Note**

New Section recodified from R4-29-309 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-310. Business Management****A. Financial responsibility.**

1. A business licensee shall maintain the financial responsibility required by A.R.S. § 3-3615 and this Chapter.
  2. A business licensee shall ensure that the required financial responsibility covers all pest management activities provided from the primary business office and each branch office.
  3. If there is an interruption in the financial responsibility of a business licensee, the business licensee shall immediately stop providing pest management services.
- B. Use of business name and license number.**
1. A business licensee shall prominently display the license issued by the PMD at the primary business office and each branch office.
  2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the PMD, on:
    - a. Customer proposals or contracts for pest management services;
    - b. Service records;
    - c. Inspection reports;
    - d. Written materials provided to customers or potential customers;
    - e. Correspondence;
    - f. Advertisements; and
    - g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
      - i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the PMD issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner;
      - ii. Is in a color that contrasts with the color of the service vehicle and trailer;
      - iii. Is on both sides of the service vehicle and trailer;
      - iv. Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and
      - v. Uses at least two-inch numbers for the license number.
  3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
  4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

**Historical Note**

New Section recodified from R4-29-310 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August

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29, 2017 (Supp. 17-2).

**R3-8-311. Reserved****Historical Note**

New reserved Section recodified from R4-29-311 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-312. Reserved****Historical Note**

New reserved Section recodified from R4-29-312 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-313. Reserved****Historical Note**

New reserved Section recodified from R4-29-313 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-314. Reserved****Historical Note**

New reserved Section recodified from R4-29-314 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-315. Reserved****Historical Note**

New reserved Section recodified from R4-29-315 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-316. Reserved****Historical Note**

New reserved Section recodified from R4-29-316 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-317. Reserved****Historical Note**

New reserved Section recodified from R4-29-317 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-318. Reserved****Historical Note**

New reserved Section recodified from R4-29-318 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-319. Reserved****Historical Note**

New reserved Section recodified from R4-29-319 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-320. Reserved****Historical Note**

New reserved Section recodified from R4-29-320 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**ARTICLE 4. SUPERVISION****R3-8-401. Supervising an Applicator**

- A. A QP and business licensee shall ensure that an applicator receives the training, equipment, and supervision that the applicator requires to comply fully with the PMD's statutes, this Chapter, and label and labeling directions.
- B. A QP shall be readily available to an applicator while the applicator provides pest management services.
- C. A QP shall ensure that the use, application, storage, or disposal of a pesticide is performed or supervised by an individual certified in a category applicable to the pesticide being used, applied, stored, or disposed.

- D. A QP shall ensure that immediate supervision, which requires supervision by a certified applicator who is physically present, is provided when an uncertified applicator performs pest management services in the wood-destroying organism management, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit. A QP shall ensure that a certified applicator provides immediate supervision to not more than two uncertified applicators at a time.
- E. In circumstances other than those described in subsection (D), a QP shall ensure that direct supervision, which does not require a supervising certified applicator to be physically present, is provided. A QP shall ensure that a certified applicator providing direct supervision considers the potential danger to the public or environment if the uncertified applicator misuses a pesticide. A QP shall ensure that a certified applicator providing direct supervision instructs the uncertified applicator in the following areas and has written evidence that the instruction was provided and understood:
  1. Proper loading, mixing, applying, storing, and disposing of the pesticide;
  2. Use of required safety equipment; and
  3. Method and means by which to contact the supervisor immediately.
- F. A QP shall ensure that an applicator has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the PMD's statutes and this Chapter. The QP shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.
- G. A QP, business licensee, and political subdivision shall not allow an uncertified applicator to apply a pesticide for more than 90 days after the applicator is registered.

**Historical Note**

New Section recodified from R4-29-401 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-402. Qualifying a Business or School District**

- A. A business licensee or school district shall employ a QP in each category of pest management in which the business licensee or school district provides pest management services. A business licensee or school district may employ multiple QPs.
- B. A QP may not qualify more than one business licensee or school district at a time.
- C. Notwithstanding subsection (B), the director may allow a QP to qualify more than one school district if the director believes that the number of applicators, pest management needs, and distance of the school districts will not hinder the QP's ability to comply with R4-29-403.
- D. A QP may only qualify a business licensee or school district in the categories of pest management in which the QP is registered.

**Historical Note**

New Section recodified from R4-29-402 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-403. Qualifying Party Management**

- A. A QP shall be physically present at the primary business office at least once every 14 days and at each branch office at least once every 120 days and ensure that all of the following are done:

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1. Determine pesticide use by reviewing records of pesticide acquisitions, storage, disposal, and current inventory;
  2. Review the pesticide inventory, including pesticides stored on a service vehicle, to determine compliance with labels, labeling, and the PMD's statutes and rules;
  3. Review the training, supervision, and equipping of applicators employed by the business licensee or school district to determine whether the training, supervision, and equipping is sufficient to enable the applicators to comply with labels, labeling, and the PMD's statutes and rules;
  4. Review personnel records to determine whether an applicator employed by the business licensee or school district is registered and certified in all applicable categories within the time-frames specified by R3-8-201;
  5. Review office records and recordkeeping procedures to determine compliance with required recordkeeping and reporting; and
  6. Ensure that any deficiency noted when the responsibilities listed in subsections (A)(1) through (A)(5) are performed is corrected.
- B.** A QP shall develop a written plan that specifies how the duties and responsibilities of the QP are to be fulfilled if the QP is absent or unavailable for any reason. The QP shall ensure that the plan is implemented when the QP is absent or unavailable.
- C.** A QP shall not delegate the responsibility to be physically present at least every 14 days at the primary business office and at least every 120 days at branch offices unless the QP submits written documentation to the PMD from a licensed medical or mental health care professional that indicates the licensed medical or mental health care professional is treating the QP and is of the opinion that the QP is unable to fulfill the responsibility to be physically present as required.
- D.** A QP shall:
1. Be active in the management of all pest management related activities of the business licensee or school district.
  2. During normal business hours, be readily available to the applicators of the business licensee or school district.
  3. Ensure that a business licensee maintains current proof of financial security.
- E.** A temporary QP has the same duties and responsibilities as a regular QP.

**Historical Note**

New Section recodified from R4-29-403 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-404. Branch Supervisors**

With respect to a branch office, the branch supervisor shall fulfill all the duties and responsibilities of a QP in this Article, except as follows:

1. The branch supervisor shall be present at the branch office at a minimum of once every 14 days to review pesticide use, storage and disposal and by ensuring the training, equipping, and supervision of the applicators.
2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though R4-29-201(C) still applies.
3. The branch supervisor is not responsible for ensuring that the business licensee maintains current proof of financial security.

**Historical Note**

New Section recodified from R4-29-404 at 23 A.A.R.

1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-405. Supervision of Qualifying Party**

A business licensee or school district shall ensure that a QP of the business licensee or school district receives the training, equipment, and supervision that the QP requires to comply fully with the PMD's statutes and rules and label and labeling directions.

**Historical Note**

New Section recodified from R4-29-405 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-406. Responsible Individuals**

A responsible individual for a political subdivision shall

1. Respond to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 3, Chapter 20.
2. Identify for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
3. Demonstrate that all applicators are properly certified.

**Historical Note**

New Section recodified from R4-29-406 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-407. Joint Responsibility**

- A.** An applicator, qualifying party, branch supervisor, or business licensee who supervises another person shall ensure that the supervised person is properly trained and equipped and receives the supervision necessary for the supervised person to provide pest management services in accordance with the pesticide label and labeling, this Chapter and the PMD statutes.
- B.** An applicator, qualifying party, branch supervisor, or business licensee who supervises another person may be held jointly responsible for the acts or omissions of the supervised person.
- C.** It is an affirmative defense to joint responsibility as described in subsection (B) if an applicator, qualifying party, branch supervisor, or business licensee complied with subsection (A) and can demonstrate that compliance with contemporaneously maintained records.
- D.** A QP and business licensee shall comply with every provision in this Chapter regarding applicator duties and responsibilities.

**Historical Note**

New Section recodified from R4-29-407 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-408. Reserved****Historical Note**

New reserved Section recodified from R4-29-408 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-409. Reserved****Historical Note**

New reserved Section recodified from R4-29-409 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-410. Reserved****Historical Note**

New reserved Section recodified from R4-29-410 at 23

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A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-411. Reserved****Historical Note**

New reserved Section recodified from R4-29-411 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-412. Reserved****Historical Note**

New reserved Section recodified from R4-29-412 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-413. Reserved****Historical Note**

New reserved Section recodified from R4-29-413 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-414. Reserved****Historical Note**

New reserved Section recodified from R4-29-414 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-415. Reserved****Historical Note**

New reserved Section recodified from R4-29-415 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-416. Reserved****Historical Note**

New reserved Section recodified from R4-29-416 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-417. Reserved****Historical Note**

New reserved Section recodified from R4-29-417 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-418. Reserved****Historical Note**

New reserved Section recodified from R4-29-418 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**ARTICLE 5. RECORDKEEPING AND REPORTING****R3-8-501. Applicator Recordkeeping**

- A.** An applicator shall make all records required by law and provide the records to the business licensee or political subdivision that supervises, directs, or employs the applicator within five business days.
- B.** Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
1. Name and address of the customer;
  2. Specific site at which a pesticide was applied;
  3. Date of service;
  4. Target pest or purpose of service;
  5. Trade name of pesticide applied;
  6. EPA registration number of any restricted use pesticide applied;
  7. Amount of pesticide applied, in terms of percent active ingredient and total amount diluent (water, etc.); total amount of concentrate and total amount of diluent (water, etc.); or total amount of ready-to-use product by weight or volume (e.g. lbs, grams, ounces, etc.); and
  8. Name and certification number of the applicator or if the applicator is uncertified, name of the uncertified applica-

tor and the name and certification number of the applicator providing supervision.

- C.** Pesticide purchase records. An applicator shall make a record of each restricted-use pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
1. Date of purchase or acquisition;
  2. Trade name of pesticide;
  3. EPA registration number of pesticide;
  4. Quantity of pesticide purchased or acquired; and
  5. Name and license number of the applicator making the pesticide purchase record or name of the business licensee.
- D.** Pesticide disposal records. An applicator shall make a record of each pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
1. Date of disposal;
  2. Trade name of pesticide;
  3. EPA registration number of pesticide;
  4. Quantity of pesticide disposed;
  5. Percent active ingredient in the pesticide disposed,
  6. Method of disposal,
  7. Location and type of disposal site or service; and
  8. Name and license number of the applicator making the pesticide disposal record or name of the business licensee.
- E.** WDIIR. An applicator who completes a WDIIR shall:
1. Complete the WDIIR using a form approved by the PMD. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the PMD approved form;
  2. Submit an original WDIIR to the QP or branch supervisor within seven days after completing the wood-destroying insect inspection;
  3. Submit a supplemental WDIIR to the QP or branch supervisor within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;
  4. If required by a federal agency, complete another inspection form in addition to but not instead of the PMD - approved WDIIR; and
  5. Ensure that the following information is included on the WDIIR:
    - a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
    - b. Date of wood-destroying insect inspection, and the WDIIR number;
    - c. Purpose of the inspection report;
    - d. Whether the report is from an original or supplemental inspection;
    - e. Name of property owner or seller;
    - f. Address of inspected property;
    - g. Inspected and un-inspected structures at the site and the reason why structures are un-inspected;
    - h. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
    - i. Whether visible evidence of wood-destroying insects is observed;
    - j. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on

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- which a proper management measure is performed, if applicable;
- k. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
  - l. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
  - m. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
  - n. Visible conditions conducive to infestation by wood-destroying insects;
  - o. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, and areas where further inspection is recommended, and a statement or indication on the diagram or graph clearly identifying inaccessible areas; and
  - p. Dated signature and certification number of the individual making the inspection. The individual making the inspection shall sign the WDIIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.

- F.** Wood-destroying organism treatment proposal. An applicator who is qualified under A.R.S. § 3-3632(B) and (E) shall complete a wood-destroying organism treatment proposal using a form approved by the PMD and provide a copy of the proposal to the person requesting the proposal or treatment and the QP.

**Historical Note**

New Section recodified from R4-29-501 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-502. Qualifying Party Recordkeeping**

- A.** In addition to ensuring that the records required under R4-29-501 are made, a QP shall ensure that complete records are made and maintained of the training, supervision, and equipment provided to an applicator.
- B.** At a minimum, QP training records must consist of the following information:
1. Date of the training,
  2. Printed name and signature of the trainee,
  3. Printed name and signature of the trainer,
  4. Brief description of topic(s) covered, and
  5. Copies of labels and any other pertinent material used in training.
- C.** A QP shall maintain the records described in this Section for three years, including after the applicator's employment ending date.

**Historical Note**

New Section recodified from R4-29-502 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-503. Business Licensee and Political Subdivision Recordkeeping and Retention**

- A.** In addition to ensuring that the records required under R3-8-501 and R3-8-502 are made and maintained, a business licensee and political subdivision shall make and maintain records of the following:
1. The specimen label and SDS for each registered pesticide currently used by an applicator supervised, directed or employed by the business licensee or political subdivision;

2. The financial responsibility required under R3-8-310(A), if applicable;
3. Purchase records of each pesticide purchased or otherwise acquired that include the following information:
  - a. Date of purchase or acquisition;
  - b. Trade name of pesticide;
  - c. Quantity of pesticide purchased or acquired; and
  - d. Name of the business licensee;
4. Date on which a service vehicle or trailer is acquired;
5. Incident reports submitted to the OPM PMD as required under R3-8-504;
6. A pest management service provided, including a service provided under a warranty;
7. The evidence of customer refusal of a re-treatment or post-construction treatment required under R3-8-309(J);
8. Written inspection reports;
9. Business licensee contracts for pest management services; and
10. Personnel records including for each applicator supervised, directed or employed by the business licensee or political subdivision:
  - a. Date of hire or beginning of relationship;
  - b. Date on which pest management services are first performed;
  - c. Training and continuing education received;
  - d. Supervision received;
  - e. Protective clothing, safety supplies, and equipment issued to employee;
  - f. Name of supervisor; and
  - g. Employment or relationship ending date.

- B.** A business licensee or political subdivision shall maintain the records as follows:

1. Records under subsection (A)(1), as long as the registered pesticide is used by the business licensee or political subdivision. The business licensee shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored;
2. Records under subsection (A)(2), current;
3. Records under subsection (A)(3) or R3-8-501(C) and (D), three years from the date of purchase or disposal;
4. Records under subsection (A)(4), as long as the service vehicle or trailer is owned by the business licensee or political subdivision;
5. Records under subsection (A)(5), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
6. Records under subsection (A)(6) and (A)(7), three years;
7. Records under subsections (A)(8) and (A)(9), three years from the date on the inspection report or customer contract;
8. Records under subsection (A)(10), three years, including after the employment ending date;
9. WDIIRs completed under subsection (C), three years; and
10. Records under subsections (A)(5) and (A)(6) that pertain to the use of a restricted-use pesticide shall be maintained separate from other records.

- C.** When an applicator supervised, directed or employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:

1. TARP number,
2. If the business licensee has the property under warranty:
  - a. Account number,
  - b. Target pest,

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- c. Date of initial treatment,
- d. Date of warranty expiration, and
3. The TARF number of each TARF completed regarding the property after the WDIIR is completed.
- D. TARF.** A business licensee or political subdivision shall:
1. Submit to the PMD a TARF, using a form approved by the PMD, within 30 days of completing an action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new-construction is complete when no further preventative treatment is necessary for the last unit at the project until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier;
  2. Include the fee with each TARF and, if applicable, the penalty required under R3-8-103;
  3. Unless exempt under subsection (D)(4), submit a TARF after completing each of the following:
    - a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
    - b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
    - c. Final grade treatment;
    - d. Initial corrective termite treatment at a site; and
    - e. WDIIR.
  4. Not submit a TARF after completing:
    - a. A supplemental WDIIR; or
    - b. The first initial corrective insect termite treatment at a site if the business licensee:
      - i. Performed a pretreatment or new-construction treatment at the site,
      - ii. Filed a TARF regarding the pretreatment or new-construction treatment, and
      - iii. Performs the initial corrective termite treatment under R3-8-309(D) or under a warranty.
  5. Include the information required under A.R.S. § 3-3631 and the following on a TARF:
    - a. License number of the licensed business that performed the work;
    - b. Name of the QP;
    - c. For a WDIIR, indicate whether:
      - i. There was evidence of infestation, conditions conducive to infestation, or damage present;
      - ii. Previous treatment was performed for an infestation; and
      - iii. Corrective actions were taken for conditions conducive or damage present;
    - d. For a pretreatment, new-construction treatment, or final grade treatment to establish an exterior vertical barrier, indicate:
      - i. Chemical used and its EPA registration number,
      - ii. Amount of chemical used,
      - iii. Percentage of active ingredient in the chemical used, and
      - iv. Square and linear footage treated; and
    - e. For a post-construction corrective termite treatment, indicate:
      - i. Type of treatment,
      - ii. Target organism,
      - iii. Chemical used and its EPA registration number,
      - iv. Amount of chemical used, and
      - v. Percentage of active ingredient in the chemical used.

**Historical Note**

New Section recodified from R4-29-503 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-504. Reporting Incidents and Bulk Releases**

- A.** Notice to PMD of an incident.
1. A business licensee and political subdivision shall provide written notice to the PMD within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee or political subdivision:
    - a. Death or illness of an individual;
    - b. Contamination of food, feed, drugs, or water supply;
    - c. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
    - d. Contamination of the environment that results in evacuation of the area.
  2. A QP shall determine if the business licensee or school district has complied with subsection (A)(1). If compliance has not occurred, the QP shall provide the written notice required by subsection (A)(1) to the PMD within the time-frame specified in subsection (A)(1).
- B.** Notice to PMD of a bulk release.
1. A business licensee or political subdivision shall notify the PMD at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the person shall immediately report the release to the Arizona Department of Public Safety Duty Office.
  2. A QP shall determine if the business licensee or school district has complied with subsection (B)(1). If compliance has not occurred, the QP shall provide the notices specified in subsection (B)(1) within one business day after the release.

**Historical Note**

New Section recodified from R4-29-504 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-505. Groundwater Protection List Reporting**

- A.** For each application of a soil-applied pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and has been detected in Arizona groundwater within the last five years, the QP shall submit the following information on a quarterly basis on a form approved by the PMD:
1. The county of use,
  2. The name of product used and the EPA registration number,
  3. The amount applied,
  4. The dates covered by the report, and
  5. Business license number.
- B.** For the purposes of this Section, "soil-applied pesticide" means a pesticide intended for application to or injection into the soil or for which the label requires or recommends that the application be followed within seventy-two hours by irriga-

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tion. Soil-applied pesticides include pesticides applied for final grade treatment, post-construction exterior trench or rod treatment, or pre-emergent weed control, but exclude pesticides applied within the stem wall or footer of a structure or to soil that will be promptly covered with concrete.

**Historical Note**

New Section recodified from R4-29-505 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**Appendix A. Reserved****Historical Note**

Reserved Article 5, Appendix A recodified from Article 5, Appendix A at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES****R3-8-601. Inspection of Licensee Records**

- A. Upon written request by the PMD for the production of records, an applicator, QP, branch supervisor, business licensee, or political subdivision shall:
1. Make the records required under this Chapter available for review by the PMD within 24 hours or by a later date specified by the PMD.
  2. Make the records available at the PMD unless another location is agreed upon.
  3. Be available to interpret the submitted records if requested by the PMD.
- B. If a person cannot timely comply with a request made under subsection (A), the person shall immediately provide written notice to the PMD, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- C. If the PMD requests a record from a business licensee or political subdivision when there may be an immediate risk to the health or safety of an individual, non-target animal, or the environment, the business licensee or political subdivision shall provide the record to the PMD within one hour.
- D. An applicator or branch supervisor is only responsible for producing records within the applicator's or branch supervisor's control.

**Historical Note**

New Section recodified from R4-29-601 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-602. Compliance with PMD Monitoring**

- A. If the PMD makes a written request of an applicator for a list of the time and location of pest management services that the applicator is scheduled to provide on a specified date, the applicator shall make the information available within 24 hours. The applicator may make the information available in a manner prescribed by the PMD.
- B. If an applicator cannot timely comply with a request made under subsection (A), the applicator shall immediately provide written notice to the PMD, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

**Historical Note**

New Section recodified from R4-29-602 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August

29, 2017 (Supp. 17-2).

**R3-8-603. Corrective Work Orders**

- A. If the PMD issues a corrective work order requiring a licensee to remedy deficiencies in treatment or to comply with this Chapter or the PMD's statutes, the licensee shall notify the PMD in writing by the date specified in the order that the corrective work is complete.
- B. The director may consider a licensee's compliance with a corrective work order or lack thereof in imposing appropriate disciplinary action.
- C. Failure to timely complete the corrective action or notify the PMD of the completion is a separate ground for disciplinary action.
- D. A corrective work order issued by the PMD is not subject to A.R.S. § 41-1009(E)-(F) unless the PMD indicates in the order that timely compliance with the order will result in no disciplinary action being taken for a deficiency or violation.

**Historical Note**

New Section recodified from R4-29-603 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-604. Disciplinary Action**

To determine the disciplinary action that is appropriate, the Director may consider the following:

1. Prior violations,
2. Dishonest or self-serving motive,
3. Amount of experience as a licensee,
4. Submission of false evidence or statements or other deceptive practices during the investigative or disciplinary process,
5. Acknowledgement of wrongful nature of violation,
6. Practices put in place to prevent a similar violation from occurring again,
7. Compliance with a corrective work order,
8. Degree of harm resulting from the violation, and
9. Whether harm resulting from the violation was cured.

**Historical Note**

New Section recodified from R4-29-604 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-605. Consent Agreements**

- A. A consent agreement shall include the following:
1. General nature of violations,
  2. Citation to statutes and rules alleged to be violated,
  3. Disciplinary action to be taken,
  4. Effective date of the disciplinary action if different from the date of the consent agreement,
  5. Corrective action to be taken, and
  6. Date to complete any corrective action.
- B. A person entering into a consent agreement with the PMD shall waive the right to a formal hearing, rehearing, or judicial review of the matters contained in the consent agreement.

**Historical Note**

New Section recodified from R4-29-605 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-606. Penalties**

- A. When assessing a civil penalty for a violation, the Director shall assess a civil penalty for each violation based on the violation's total point value set out in this Section. To calculate the total point value, the Director shall sum the points for each

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aggravating factor and may subtract the points for each mitigating factor. The Director, in his sole discretion, may treat multiple violations as a single violation for the purpose of calculating the civil penalty.

- B. Aggravating factors.**
  - 1. Pesticide type.
    - a. General use. 2
    - b. Experimental use or special local need. 3
    - c. Restricted use or unregistered. 5
  - 2. Harm to humans and non-target animals.
    - a. None or unverified potential harm. 0
    - b. Potential harm. 3
    - c. Actual, verifiable harm. 5
  - 3. Harm to environment and economic loss.
    - a. None or unverified potential harm. 0
    - b. Potential harm or loss. 3
    - c. Actual, verifiable loss of \$10,000 or less. 4
    - d. Actual, verifiable loss exceeding \$10,000. 5
    - e. Actual, verifiable environmental harm. 5
  - 4. Non-pesticide violations.
    - a. Negligent violations. 4
    - b. Knowing or willful violations. 8
  - 5. Prior similar violations.
    - a. None. 0
    - b. Warning letter within 12 months. 1
    - c. One or more within 36 months, but none within 12 months. 2
    - d. One within 12 months. 3
    - e. More than one within 24 months, but none within 12 months. 4
    - f. More than one within 12 months. 5
  - 6. Culpability.
    - a. Negligent violations. 2
    - b. Knowing or willful violations. 4
- C. Mitigating factors.** In considering whether to subtract points for mitigating factors, the Director may consider whether the mitigating act occurred before, during, or after PMD's investigation.
  - 1. Good will.
    - a. Admission of fault. 1
    - b. Admission and cooperation 2
    - c. Admission, cooperation, and corrective action prior to request. 3
  - 2. Environmental benefit.
    - a. Clean up. 1
    - b. Move toward less toxic methods. 2
    - c. Develop IPM program. 3
  - 3. Consumer benefit.
    - a. Consumer education. 1
    - b. Make consumer whole. 2
    - c. Extend warranty. 3
  - 4. Other benefits.
    - a. Training (CEU). 1
    - b. Equipment (modification or new). 2
    - c. Purchase and use of computer for TARFs. 3
- D. Civil penalty.** To calculate the civil penalty, the Director shall:
  - 1. For total point values of 6-10, multiply the value by \$100 and then subtract \$500.
  - 2. For total point values of 11-15, multiply the value by \$100 and then subtract \$600.
  - 3. For total point values of more than 16, assess the maximum penalty of \$1000.
- E. Other penalties.** In addition to assessing a civil penalty, the Director:
  - 1. For any total point value, may require extra continuing education.

- 2. For total point values of 6-11, may impose probation requirements.
- 3. For total point values of 12-17, shall impose probation requirements and may suspend the license, certification, or registration.
- 4. For total point values of 18 or more, shall suspend or revoke the license, certification, or registration.
- 5. May take any other action permitted by law, including imposing probation requirements after a suspension ends.

**Historical Note**

New Section recodified from R4-29-606 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

**R3-8-607. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-607 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-608. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-608 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-609. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-609 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**ARTICLE 7. RESERVED**

**R3-8-701. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-701 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-702. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-702 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-703. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-703 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-704. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-704 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-705. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-705 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-706. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-706 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-707. Reserved**

**Historical Note**

New reserved Section recodified from R4-29-707 at 23

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A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**Historical Note**

New reserved Section recodified from R4-29-708 at 23  
A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

**R3-8-708. Reserved**

### 3-3603. Powers and duties of director

A. The director is responsible for administering this chapter and shall:

1. Adopt rules that are necessary or proper to administer and implement this chapter, including rules that may be more stringent than a corresponding federal law for:

- (a) Administrative provisions.
- (b) Licensure, certification and registration requirements and qualifications, including training and education requirements and financial security standards.
- (c) Health and safety provisions.
- (d) Duties and responsibilities.
- (e) Recordkeeping and production of records requirements.
- (f) Licensee inspection and treatment report requirements.
- (g) Disciplinary action provisions.
- (h) Equipment provisions.
- (i) Advertising requirements.
- (j) The use, storage and application of pesticides and devices used in pest management.

2. Notify the business licensee, applicator and qualifying party in writing of any inquiry into possible violations by the business licensee, applicator or qualifying party by the close of business on the tenth business day after the day on which the director initiated the inquiry if the director anticipates an enforcement action. If in the course of the investigation the division identifies any alleged violations by a different business licensee, applicator or qualified party, the director shall notify the additional alleged violator by the close of business on the tenth business day after the day on which the director initiated the new inquiry.

3. Develop and either conduct or contract to conduct certified applicator and certified qualified applicator tests at locations throughout this state. If the director contracts for these tests, the contracts may provide for specific examination fees or a reasonable range of fees determined by the director to be paid directly to the contractor by the applicant. The director shall make all efforts to contract with private parties to electronically administer the tests.

4. Maintain a computer system for the benefit and protection of the public that includes the following information on pretreatments, new-construction treatments, final grade treatments, initial corrective treatments and wood-destroying insect inspection reports:

- (a) The name of the individual who performed the work.
- (b) The address or location of the work or project.
- (c) The name of the pest management company.
- (d) The name of the qualifying party.
- (e) The applicator license numbers.
- (f) The nature and date of the work performed.

(g) Any other information that is required by rule.

5. Establish offices the director deems necessary to carry out the purposes of this chapter.

6. Subject to title 41, chapter 4, article 4, employ personnel the director deems necessary to carry out the purposes of this chapter and designate their duties.

7. Oversee the approval, content and method of delivery of continuing education courses.

8. Deny a license to any person who has had a license revoked for a period of five years from the time of revocation.

9. License applicators and qualified applicators and license businesses in accordance with this chapter and rules adopted pursuant to this chapter.

10. Register qualifying parties, branch supervisors and branch offices in accordance with this chapter and rules adopted pursuant to this chapter.

11. Require the payment of a penalty for any late license renewal.

12. Refuse to issue a business license in a name that is not registered with the secretary of state or filed with the Arizona corporation commission.

13. Adopt a wood-destroying insect inspection report form for use by business licensees.

14. Receive monies authorized under this chapter for deposit, pursuant to sections 35-146 and 35-147, in the appropriate funds.

B. The director may:

1. Compel attendance of witnesses, administer oaths or affirmations and take testimony concerning all matters coming within the director's jurisdiction.

2. Issue subpoenas for the taking of depositions, the production of documents and things and the entry on land for inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation on the property relevant to an inquiry or complaint.

3. Contract and enter into interagency and intergovernmental agreements with any private party or public agency.

4. With at least twenty-four hours' notice, unless there may be an immediate risk to public health and safety, require a business licensee, qualifying party or applicator to produce specific records. On a showing of good cause by the business licensee, qualifying party or applicator, the director may excuse failure to timely comply.

5. Deny or revoke a license based on the information in the application.

6. Issue advisory notices for de minimis violations.

7. Investigate alleged violations of this chapter, rules adopted pursuant to this chapter, consent agreements, orders and any condition imposed in connection with a license.

8. Require the public to provide notices regarding alleged violations in writing.

9. Pursuant to section 41-1092.11, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.

10. Issue a corrective work order requiring a business licensee or applicator to remedy deficiencies in treatment or to comply with this chapter or any rules adopted pursuant to this chapter before or after a formal hearing.
  11. On receipt of a complaint or on initiation of a complaint by the division, investigate any alleged violation of unlicensed activity pursuant to this chapter. If the director determines that an unlicensed person is performing an act that is required to be performed by a person licensed pursuant to this chapter, the director shall take one or more of the following enforcement actions:
    - (a) Issue a cease and desist order requiring the person to immediately cease operations.
    - (b) Impose on the person a civil penalty of not more than one thousand dollars for the first occurrence and not more than two thousand dollars for the second occurrence.
    - (c) File an action to enjoin the person from engaging in the unlicensed activity.
    - (d) Request that the county attorney or attorney general file charges against the person.
  12. Refuse to issue a business license in a name that is likely to be misleading or to imply any distorted representation about the business.
  13. Register a certified applicator who is a representative of a business licensee as a temporary qualifying party if the qualifying party becomes disassociated with the business licensee.
  14. Provide and conduct classes to train individuals in preparation for certified applicator and certified qualified applicator tests. The director may assess a fee for each class. The director may contract with a commercial enterprise or an accredited institution to conduct the class.
  15. Provide and conduct continuing education classes quarterly. The director may assess a fee for each credit hour. The director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of division staff.
  16. Enter into consent agreements and issue consent orders.
  17. Designate by rule devices that are exempt from the licensure, certification and registration requirements of this chapter.
  18. Charge a person for providing copies of rules, forms or policies proposed for adoption and for educational materials.
  19. Require a business licensee or qualifying party to register with the division or to otherwise identify all of the licensed or unlicensed applicators of the business or supervised by the qualifying party.
  20. Require a business licensee to produce records for the purpose of verifying that an individual is an applicator of the business licensee.
  21. Charge a handling fee in addition to the transaction amount for any transaction that could have been completed electronically and was not.
  22. Deny or refuse to renew a license of a person who owes unpaid fees or civil penalties to the division.
- C. The director or any duly authorized agents may enter any private or public property, including a service vehicle, on which pesticides are located or are reasonably believed to be located to be used for purposes related to pest management or any office of a business engaged in pest management. The owner, managing agent or occupant of the property or office shall permit entry for the purpose of inspecting and investigating conditions relating to the use, storage, application and disposal of pesticides, including worker safety materials and records pertaining to pest management. If a person refuses to admit the director or the authorized agent in accordance

with this subsection, the director may obtain a warrant from a court of competent jurisdiction. If a licensed or certified person refuses to admit the director or an authorized agent in accordance with this subsection during regular business hours, the director may impose disciplinary action on the person.

D. The director or any duly authorized agents may monitor compliance by a person with this chapter and rules adopted pursuant to this chapter while the person is providing pest management services.

**F**

**CONSIDERATION AND DISCUSSION OF THE 2022 COUNCIL CALENDAR**

**GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2022 (MEETING DATES ARE SUBJECT TO CHANGE)**

<b>DEADLINE FOR PLACEMENT ON AGENDA *</b>	<b>FINAL MATERIALS SUBMITTED TO COUNCIL</b>	<b>DATE OF COUNCIL STUDY SESSION</b>	<b>DATE OF COUNCIL MEETING</b>
<i>Tuesday</i> December 21, 2021	<i>Tuesday</i> January 18, 2022	<i>Tuesday</i> January 25, 2022	<i>Tuesday</i> February 1, 2022
<i>Tuesday</i> January 18, 2022	<i>Tuesday</i> February 15, 2022	<i>Tuesday</i> February 22, 2022	<i>Tuesday</i> March 1, 2022
<i>Tuesday</i> February 15, 2022	<i>Tuesday</i> March 22, 2022	<i>Tuesday</i> March 29, 2022	<i>Tuesday</i> April 5, 2022
<i>Tuesday</i> March 22, 2022	<i>Tuesday</i> April 19, 2022	<i>Tuesday</i> April 26, 2022	<i>Tuesday</i> May 3, 2022
<i>Tuesday</i> April 19, 2022	<i>Tuesday</i> May 17, 2022	<i>Tuesday</i> May 24, 2022	<b>Wednesday</b> June 1, 2022
<i>Tuesday</i> May 17, 2022	<i>Tuesday</i> June 21, 2022	<i>Tuesday</i> June 28, 2022	<b>Wednesday</b> July 6, 2022
<i>Tuesday</i> June 21, 2022	<i>Tuesday</i> July 19, 2022	<i>Tuesday</i> July 26, 2022	<i>Tuesday</i> August 2, 2022
<i>Tuesday</i> July 19, 2022	<i>Tuesday</i> August 23, 2022	<i>Tuesday</i> August 30, 2022	<b>Wednesday</b> September 7, 2022
<i>Tuesday</i> August 23, 2022	<i>Tuesday</i> September 20, 2022	<i>Tuesday</i> September 27, 2022	<i>Tuesday</i> October 4, 2022
<i>Tuesday</i> September 20, 2022	<i>Tuesday</i> October 18, 2022	<i>Tuesday</i> October 25, 2022	<i>Tuesday</i> November 1, 2022
<i>Tuesday</i> October 18, 2022	<i>Tuesday</i> November 22, 2022	<i>Tuesday</i> November 29, 2022	<i>Tuesday</i> December 6, 2022

<i>Tuesday</i> November 22, 2022	<i>Tuesday</i> December 20, 2022	<i>Tuesday</i> December 27, 2022	<i>Tuesday</i> January 3, 2023
<i>Tuesday</i> December 20, 2022	<i>Tuesday</i> January 24, 2023	<i>Tuesday</i> January 31, 2023	<i>Tuesday</i> February 7, 2023

\* 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.