

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by 1st filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
Article 1	New Article
R3-2-101	New Section
R3-2-102	New Section
R3-2-103	New Section
R3-2-104	New Section
R3-2-105	New Section
R3-2-106	New Section
R3-2-107	New Section
R3-2-108	New Section
R3-2-109	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-1481

Implementing statutes: A.R.S. §§ 3-1481, 3-1482, and 3-1483

3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Shirley Conard, Rules Specialist

Address: Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

Ratites, ostrich, emu, and rhea, are flightless birds having a flat sternum and rudimentary wings.

The ostrich industry has been a viable commercial agricultural industry for more than 100 years in South Africa, but references to the ostrich and their by-products can be found from the time the Pharaohs were in ancient Egypt. Currently the ostrich industry is growing at a remarkable pace in North America and other parts of the world.

The North American ratite industry is beginning to move out of the breeding phase, which means there is little commercial processing at the present time. Instead of being slaughtered, ratites are sold to other ranchers entering the ratite business. A pair of breeding adult ostriches recently cost between \$50,000 and \$75,000. Ranchers in North America are striving to meet the demand for fertile eggs, chicks, yearlings, and adult breeders. As the population approaches numbers necessary to support a slaughter market, prices will drop. The breeding stock of ostriches is increasing at a rate of 40% to 50% a year. At this time, there is no firm estimate when the supply of ostriches will be at a sufficient level to meet current, let alone future, consumer demand. Current U.S. demand for ostrich leather, meat, feathers, and other products may be as high as 150,000 birds annually.

As farmers are called upon to feed the ever-increasing world population, the efficiency of the ratite in putting on muscle will become very attractive. A beef animal's feed-to-muscle conversion is 5 to 1, meaning the animal must consume 5 pounds of feed to put on 1 pound of muscle. Some private ranchers have measured ostriches to have a feed-to-muscle conversion ration of 2 to 1.

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Also, ratites have higher reproductive capabilities. For instance, in the cattle industry, once a cow calves, it takes 21 months to bring the calf to market with a slaughter weight of 1,100 pounds and a leather yield of 30 square feet. An ostrich hen will lay an average of 45 to 50 eggs a year with some laying as many as 120 eggs a year. Using the average number of eggs and a modest 50% survival rate, 23 birds will go to market in the 12-14 month range. At this age, each bird will yield approximately 75 pounds of meat and 14 square feet of leather. Economics heavily favors the ostrich breeding pair, with a total meat yield of 1,750 pounds versus 1,050 pounds for the steer. Furthermore, the ostriches will yield 332 square feet of leather to the cow's 30 square feet. The ostriches also yield feathers.

Ratite farming, which includes ostrich, emu, and rhea, is a potentially fast-growing alternative agricultural business. Thousands of ranchers nationwide are raising ratites for foundation stock and production. A survey conducted last summer by the American Ostrich Association shows that more than half of the nation's ostriches are located in the Southwest (Texas, Oklahoma, New Mexico, Arizona, and California). And Arizona has the largest single concentration of ostriches. In fact, Arizona accounts for more than 10% of the nation's ostriches. The industry is rapidly making the transition to a commercial market. Since there has always been a demand for ostrich leather, especially for the western boot market, the key has been to develop a market for the meat.

The potential of the ratite as a meat source is significant. Ratite farmers wishing to market their products to the public must take their ratites to slaughterhouses and processing establishments that can provide the necessary official marks and brands to assure that the carcasses and parts of carcasses have been inspected according to federal or state laws.

This voluntary rule package establishes the Department authority to inspect, register, and charge fees for any slaughterhouse and processing establishment wishing to handle ratites.

Specific Section-by-Section Explanation of this Proposal

R3-2-101, Definitions. This Section defines the terms used within the new Sections governing the ratite slaughterhouses and processing establishments, pursuant to A.R.S. Title 3, Chapter 11, Article 10, which will simplify interpretation of responsibility and clarity of purpose.

R3-2-102, Slaughterhouse and Processing Establishment Registration, Fees. This Section establishes the fees required for slaughterhouse and processing establishments and sets up the time frame for obtaining the registration. The fees are based on the statutory requirements, A.R.S. § 3-1481(B), "the Director may adopt fees to cover the costs directly related to this Article," and A.R.S. § 3-1482(B), "The Director shall establish a [slaughterhouse] registration fee of at least 100 but not more than \$500, that shall be submitted with the registration form."

R2-3-104, Registration Denial, Revocation, and Suspension. This Section lists the specific circumstances for which a certificate or registration may be denied, revoked, or suspended.

R3-2-105, Slaughterhouse Requirements. This Section sets the requirements for ratite slaughterhouses. These requirements, which are based on the USDA red meat slaughterhouse regulations, are primarily the same as those currently enacted for meat and poultry slaughterhouses, except specific size variations dealing with ratite vs. livestock.

R3-2-106, Ante-mortem Inspection Procedures. This Section sets the procedures to be followed by the inspector and slaughterhouse personnel before a ratite is slaughtered. The Section specifies the characteristics of animals designated as "suspects", "condemned", and "downers", and establishes the procedure when dealing with electronic identification services (EIDs). It is essential that EIDs are removed or the resulting product will be adulterated.

This Section addresses the electronic identification device (EID), which is often used as an identifier by a producer. Although it is the responsibility of the slaughterhouse to remove the EIDs, it is the producer's responsibility to inform the slaughterhouse if the ratite has an EID and where it is located.

R3-2-106, Slaughter Procedures. This Section establishes the requirements of slaughter from stunning, bleeding, and feather removal to skinning and evisceration. These requirements are refinements of the USDA, Texas, and Oklahoma guidelines.

R3-2-108, Post-mortem Inspection Procedures. This Section sets the procedures to be followed by the inspector and slaughterhouse personnel after a ratite is slaughtered and is a refinement of the USDA, Texas, and Oklahoma guidelines. The Section also establishes that each carcass or part of a carcass will be marked with the official Arizona Inspected and Passed brand and a specific designation indicating the specific species of the ratite.

R3-2-109, Processing Establishment Requirements. This Section sets the requirements for ratite processing establishments. The requirements are based on Arizona statutes regulating meat and poultry processing establishments.

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

Not applicable.

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

This proposed rulemaking sets up a voluntary program for ratite producers by giving them the option of choosing between USDA and state inspection to market their products. This rulemaking deals with requirements for ratite slaughter and ratite processing establishments. Although there are costs and benefits associated with the program, because the program is voluntary there is no negative impact to the industry.

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Each entity affected by this rulemaking is making a voluntary decision to engage in the costs associated with the program. The Department is assured of obtaining funds to meet the requirements of this program by setting the costs to meet the directive of A.R.S. § 3-1481(B), that "*the Director may adopt fees to cover the costs directly related to this Article.*"

The benefits of these rules outweigh costs associated with the rules and provide ratite producers with an alternative (and sometimes only) way to sell their products.

A. *Estimated Costs and Benefits to the Department of Agriculture*

Initially, the Department may be using inspectors working for the meat and poultry program (MPI). This may infringe upon the legitimate time demands of the MPI inspectors and additional costs related to overtime may occur. This readjustment of personnel, however, will provide information and justification if the need for additional inspectors is warranted for this new program.

While the MPI program is half-funded by USDA-FSIS, statute requires the ratite program to be self-supporting and not receive funding from an outside source. Therefore, it will be important for the Department to keep precise records to account for the time the inspector spends working on each program.

Registration Inspection. The registration fee of \$100 for a slaughterhouse and \$25 for each location of a processing establishment is the base amount for the initial application and renewal. The applicant will also be charged for time spent verifying the slaughterhouse or the processing establishment meets the requirements of the Article. This verification process includes the actual time the supervisor or State Veterinarian spends inspecting the slaughterhouse or processing establishment, the time spent in transit to and from the office, and the travel reimbursement prescribed by statute. It is anticipated the supervisor or State Veterinarian will need approximately 1 hour at the slaughterhouse or processing establishment. Based upon the average salary of a grade 21 Administrative Services Officer II and a grade 24 State Veterinarian, the following explains the per hour charge for registration inspection: \$21.50, average salary; \$6.50, clerical salary based upon processing 1.25 registrations per hour at \$8.13 per hour; \$7.84, 28% ERE; and \$11.47, 32% indirect administrative costs. (TOTAL \$47.31).

Slaughter Inspection. The inspector must be present from ante-mortem through the entire slaughter process. The inner carcass is checked for any abnormalities, and the inspector makes certain the animal has been bled properly. If the inspector finds any abnormalities, or finds the bird was not bled properly, changes to the procedure will be made. On the average, 1 bird moves through the slaughter process every 45 minutes.

The actual time the inspector spends observing the slaughter or processing procedure will be accounted toward ratite inspection and will be based upon the following: The average cost of a grade 16 inspector at \$13.84 per hour; \$3.00 for supervisory authorization averaging 10 minutes per inspector hour; \$5.85, 28% ERE; and \$7.26, 32% indirect administrative costs. (TOTAL \$30.00). One-half hour of clerical work at \$4.06 (\$8.13 FTE) will also be added per inspector day.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. *Businesses Directly Affected by the Rulemaking*

Estimated Costs and Benefits to Producers, Slaughterhouse Operators, Processing Establishments, and Contract Veterinarians:

The ratite industry in the United States is changing from a primary breeder industry to an industry whose primary focus is the commercial production of ratites for their products - meat, leather, feathers, and oil. The capacity (facilities and expertise) to slaughter ratites cost effectively and efficiently is developing quickly, and slaughter numbers have been increasing dramatically for the last 12 months.

Certain management areas within the farm stand out as being key for making improvements in productivity and increasing income. These areas are genetic selection, disease prevention programs to improve flock health, environmental management, and feed costs (price and productivity of the feed).

Ratite producers must devise good marketing techniques and strategies to get buyers for their ratite meat products, and for every other part of the bird as well.

Although the 3 ratite species have anatomical and physiological differences, and many disease processes and management techniques are similar, the processing methods are virtually identical. The requirements for slaughterhouse equipment are much the same as the existing MPI slaughterhouse requirements. They include sanitary facilities, specific floor and wall materials, pest controls, cooler specifications, and inedible product areas. The differences in the rules come from the equipment dimension adjustments due to the size of ratites vs. the size of livestock.

Chief among the factors in a slaughter industry is the price paid for the animal at time of delivery to the processing plant. In most instances, this price is based on either live weight or hanging weight of the carcass. The Commodity Report, updated and printed each month in *The Ostrich News*, reflects the range of current prices paid by processors. A typical per-pound price is \$4.25 paid for ostrich carcasses (hide and internal organs removed) and \$5 for emus (hide and internal organs removed, fat included). Currently, there has not been a routine reduction imposed for light carcasses, nor a premium paid for optimal weight carcasses. The suggested weights are over 200 pounds for ostrich and over 80 pounds for emus.

The figures included in **Table 1** offer an average breakdown per bird of recently processed ostrich providing figures for percentage of yield from live weights through actual processed product. Based on the figures given, an ostrich weighing 271

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pounds will end up as a carcass weighing 134 pounds on the rail. At \$4.25 per, this carcass will provide a return of \$569.50 to the producer. Based on figures derived from previous cost analysis of production done at Oklahoma State University this should net the producer \$400. A similar breakdown for emus (not reflected in the table) averaging 76 pounds live weight produced a carcass of 43 pounds on the rail. At a price of \$5 per pound, this carcass provides the producer \$215 with a net of \$130.

TABLE 1

Live Weight, Rail Weight, and Weight of Processed Cuts (in pounds) for Ostrich Slaughtered at a Commercial Operation in Oklahoma

OSTRICH

Live Weight		271.00 lbs
Rail Weight		134.00 lbs.
Steaks		20.25 lbs.
Stir-fry/Stew		13.00 lbs.
Roast		11.25 lbs.
Ground		17.25 lbs

To maintain a healthy, stable industry, we must look at this data from the perspective of the processor. Here the important element is the ability of the processor to offer the meat product at reasonable and competitive prices and yet earn a profit. Table 1 reflects the processors usable production of meat from the ostrich purchased from the producer. The 134-pound ostrich carcass costing the processor \$569.50 provides 6 pounds of prime steak, 14.25 pounds of select steaks, 13 pounds of stir-fry/stew meat, 11.25 pounds of roasts, and 17.25 pounds of ground meat. In addition to the carcass cost, the processor's direct costs include initial inspection and killing costing \$30-\$60 per bird, labor costs of \$45-\$65 for processing, and about 10¢ per-pound packaging. The minimum cost to the processor of the 134-pound ostrich carcass is \$707.90 for 61.75 pounds of meat. These figures do not include costs for facilities, equipment, utilities, marketing, promotion, shipping, or other indirect costs.

According to these figures, if it relies only on meat sales, the processor must sell the meat at premium prices to see even a small return. Today, for example, that means selling prime ostrich steaks at \$18 per pound; select steaks at \$15 per pound; stir-fry/stew meat at \$12 per pound; roasts at \$12 per pound; and ground at \$7.50. At these premium prices the processor expects, after all meat sales, roughly a \$50 gross profit. But, the fact is these prices are not consistently obtained by the processor nor do these prices encourage widespread marketing efforts.

According to restaurant industry sources, most quality restaurants cannot pay in excess of \$3-\$6 per-pound wholesale for product and still expect to sell enough of that product to justify stocking it on a regular basis. It is also difficult to earn sufficient profit margins with the more expensive product. If we work toward \$3-\$6 as a processor figure, we can easily see that significant changes must take place in the industry to enter into competition with existing meat items. And, that high end \$5 figure is processor sales, not the wholesale cost offered by a meat distributor.

The processor then must take action to market all of the bird. They must receive income from hides, bell meats, bones, and feathers. Ostrich hides, currently quoted in the Commodity Report at \$270-\$325 offer significant income. Emu fat is another source of revenue for the processor. Increased efficiency in the processor operation and reduced costs of processing can be expected especially as volumes increase. The economy of volume cannot be overstated when costs such as processing, overhead, and transportation are considered.

Maximizing carcass weight is a key area of immediate concern for processors. Examining Table 2, you can see the variations in weight of emus offered for harvest. As an example, an emu weighing 50 pounds live weight yields only 15.5 pounds of boneless meat while a 70-pound emu yields 25.5 pounds and a 90 pounder yields 34.5 pounds of boneless meat. From the processor's perspective, the meat provided by the 50-pound emu is costing him \$4 more per pound than meat from the 90 pounder. The processor cannot continue to buy less productive birds at premium prices and must begin to penalize birds that will not dress out. Remember the cost of processing, inspection, and packaging remain constant regardless of the size of the bird. Thus, it is fair to assume emus under 90 pounds will see a substantial reduction in payment from the processor just as will ostrich under 200 pounds.

TABLE 2

Live Weight, Hanging Weight, and Boneless Meat (in pounds) for Select Emus Slaughtered at a Commercial Operation in Oklahoma.

EMU

Live Weight	Hanging Weight	Boneless Weight
50 lbs.	32.5 lbs	15.5 lbs
64 lbs.	40.0 lbs	20.0 lbs
73 lbs.	36.0 lbs	25.5 lbs
83 lbs.	43.0 lbs.	23.0 lbs.
90 lbs.	47.0 lbs.	34.5 lbs.

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The producer should not be surprised that processors pay premium prices only for birds that provide the best ratio for meat per pound of carcass. While ostrich and emus both show surprisingly good meat performance, there is certainly room for improved performance. There are some keys to gaining better performance, there is certainly room for improved performance. There are some keys to gaining better performance. First, these birds go through extreme growth spurts. For example, as ostrich might jump rapidly from 100 pounds to 150 pounds seemingly overnight. But, growth is not meat. The meat goes on after the growth spurt has concluded. Given the wide range of birds we have today, there is a great deal of variance about when these "spurts" occur. Producers should be our competition while providing reasonable and realistic profits for each party.

The following information is taken from a February 1996 survey sent to Arizona ratite producers:

- From 1,147 female ostriches, 1,028 birds laid 57,075 eggs during the 1994/1995 season, averaging 55-56 eggs per bird.
- A 60% hatching rate produced 34,245 chicks.
- 30% of the chicks, 13,698 birds, will be retained for breeding.
- Approximately 20,547 birds will be sold or slaughtered in 1996-97.
- 326 ostriches were slaughtered in 1995.

- From 323 female emus raised, 275 birds laid 6,955 eggs during the 1994/1995 season, averaging 25 eggs per bird.
- A 84% hatching rate produced 5,842 chicks.
- 12.5% of the chicks, 730 birds, will be retained for breeding.
- Approximately 5,112 birds will be sold or slaughtered in 1996-1997.
- 57 emus were slaughtered in 1995.

- From 45 female rheas raised, 43 birds laid 1,508 eggs during the 1994/1995 season, averaging 35 eggs per bird.
- A 41% hatching rate produced 618 chicks.
- 6.33% of the chicks, 39 birds, will be retained for breeding.
- Approximately 579 birds will be sold or slaughtered in 1996/1997.
- 5 rheas were slaughtered in 1995.

The Arizona producers have agreed to provide slaughterhouses with any electronic identification device locator (\$600 each) the slaughterhouse does not currently have. The processor may purchase the locator for his or her own use and loan it to the slaughterhouse when the producer's birds are being slaughtered, or when the number of slaughtered birds is greater, ratite cooperatives may purchase the locators specifically for each slaughterhouse.

If a state inspector is not available to observe the slaughter or processing procedures, a contract veterinarian may be employed. The actual time the contract veterinarian spends observing the slaughter or processing procedure will be accounted toward ratite inspection and will be based upon the following: The average cost of a contract veterinarian at \$45 per hour; \$3 for supervisory authorization averaging 10 minutes per inspector hour; and \$15.36 for 32% indirect administrative costs. (TOTAL \$63) One-half hour of clerical work at \$4.06 (\$8.13 FTE) will also be added per inspector day.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Although we are aware ratite producers have already hired workers to help on their ranches, it is difficult to predict the number of jobs this industry will produce in the future. If producers can market their ratites and provide a steady supply of birds, the Department, the slaughterhouse, and the processing establishments will all experience a shortage of personnel and need to hire additional employees.

E. *Estimated Costs and Benefits to Consumers and the Public.*

The emergence of the slaughter industry has completely changed the economics of ratite production. Today the ratite producer must manage with productivity and cost in mind. As we look at 1996, there will clearly be more birds slaughtered, both in the United States and in other countries. This will put a downward pressure on prices of meat and leather. The challenge will be to market ratite products well, and to offer the marketplace a high-quality product with clearly defined benefits.

F. *Estimated Costs and Benefits to State Revenues*

This rulemaking will have no impact on state revenues.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard
Address: Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
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8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by July 17, 1996, at 4:30 p.m. The Department is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact Pat Stevens, (602) 542-4316, at least 72 hours before the oral proceeding.

An oral proceeding has been scheduled as follows:

Date: July 15, 1996
Time: 10 a.m.
Location: Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007
Nature: Oral Proceeding

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE

ANIMAL SERVICES DIVISION

ARTICLE 1. RATITES

<u>Section</u>	<u>Definition</u>
<u>R3-2-101.</u>	<u>Slaughterhouse and Processing Establishment Reg-</u>
<u>R3-2-102.</u>	<u>istration. Fees</u>
<u>R3-2-103.</u>	<u>Application for Slaughter or Processing Official</u>
<u>R3-2-104.</u>	<u>Inspection, Pre-official Inspection Evaluation Fee</u>
<u>R3-2-105.</u>	<u>Denial, Withdrawal, and Suspension of Official</u>
<u>R3-2-106.</u>	<u>Inspection</u>
<u>R3-2-107.</u>	<u>Slaughterhouse Requirements, Official Inspection</u>
<u>R3-2-108.</u>	<u>Fee</u>
<u>R3-2-109.</u>	<u>Ante-mortem Inspection Procedures</u>
	<u>Slaughter Procedures</u>
	<u>Post-mortem Inspection Procedures</u>
	<u>Processing Establishment Requirements</u>

ARTICLE 1. RATITES

R3-2-101. Definition

The following terms apply to this Article.

"Adulterated" means any carcass or part, meat, or meat food product under 1 or more of the following circumstances:

- a. If it bears or contains any poisonous or deleterious substance that may render it injurious to health. If the substance is not an added substance, the Article shall not be considered adulterated if the quantity of the substance in or on the article does not ordinarily render it injurious to health.
- b. If, because of administration of any substance to the live animal or otherwise, it bears or contains any added poisonous or deleterious substance that may, in the judgment of the State Veterinarian, make the Article unfit for human food, other than a substance that is:

- i. A pesticide chemical in or on a raw agricultural commodity,
- ii. A food additive, or
- iii. A color additive.
- c. If it is, in whole or in part, a raw agricultural commodity and the commodity bears or contains a pesticide chemical that is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 CFR 408;
- d. If it bears or contains any food additive that is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 CFR 409;
- e. If it bears or contains any color additive that is unsafe within the meaning of the Food, Drug, and Cosmetic Act, 21 CFR 706. An article that is not deemed adulterated under subsections (aa)(2)(ii), (iii), or (iv) of this CFR Section shall be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited for use in official establishments by the regulations in 9 CFR 301, Subchapter A.
- f. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.
- g. If it has been prepared, packed, or held under unsanitary conditions where it may have become contaminated with filth, or where it may have been rendered injurious to health.
- h. If it is, in whole or in part, the product of an animal that has died other than by slaughter.
- i. If its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.
- i. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity

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with a regulation or exemption in effect pursuant to the Federal Food, Drug, and Cosmetic Act, 21 CFR 409.

- k. If any valuable constituent has been in whole or in part omitted or abstracted from, or if any substance has been substituted, in whole or in part, or if damage or inferiority has been concealed in any manner, or if any substance has been added, mixed, or packed to increase its bulk or weight, or reduce its quality or strength, or make it appear of greater value than it is.

"Biological residue" means any substance, including its metabolics, remaining in ratites at the time of slaughter or in any of its tissues after slaughter as the result of treatment or exposure of the ratite to a pesticide, organic or inorganic compound, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.

"Captive bolt" means a stunning instrument that when activated drives a bolt out of a barrel for a limited distance.

"Commercial purposes" means for use in commerce.

"Condemned" means that the ratite identified has been inspected and is in a dying condition, or is affected with a condition or disease that requires condemnation of its carcass, or that the carcass, viscera, other part of the carcass, or other product identified has been inspected and is adulterated.

"Contract veterinarian" means a private practice veterinarian who contracts with the Department to inspect the slaughtering of ratites or make a disposition of individual ratites.

"Downers" means ratites that cannot rise from a recumbent position or that cannot walk, including those with broken appendages, severed tendons or ligaments, or nerve paralysis.

"Eviscerate" means to disembowel or remove entrails.

"Green-struck" means bile-contaminated ratite meat.

"Inspector" means an employee of the Department or other cooperating governmental agency whose duties are the enforcement of any law or rule of the Department, or a contract veterinarian hired to enforce the laws and rules of the Department.

"Official inspection" means the act of a Department employee or contract veterinarian being present during the slaughter or processing, or both, of ratites.

"Operator" means the person who has registered a slaughterhouse or processing establishment and who is responsible for that slaughterhouse or processing establishment.

"Person" means an individual, corporation, partnership, trust, association, cooperative association, and any other business unit or organization.

"Ratite" means ostriches, emus, rheas, and cassowaries.

"Retained" means the carcass, viscera, other part of carcass or other product, or article so identified is held for further examination by an inspector to determine its disposition.

"Sampling" means economic, chemical, or microbiological testing.

"Suspect" means that the ratite identified is suspected of being affected with a disease or condition that may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by an inspector to determine its disposition.

"Synovitis" means the inflammation of a synovial membrane, caused by injury, nutritional deficiency, or microorganisms.

"True container" means the receptacle or other covering in which any product is directly contained or wholly or partially enclosed.

"USDA" means the United States Department of Agriculture.

R3-2-102. Slaughterhouse and Processor Establishment Registration, Fees

A. Any person operating a slaughterhouse or a processing establishment for slaughtering or processing ratites for commercial purposes shall, pursuant to A.R.S. § 3-1482, provide the following information to the State Veterinarian on a registration form furnished by the Department:

1. The name, address, and telephone number of the applicant;
2. The date of the registration form;
3. The name, physical address, mailing address, and telephone number of all business locations;
4. The names, titles, and home addresses of all persons responsibly connected to the business;
5. The signature and title of the applicant; and
6. Whether the applicant has had a slaughterhouse or processing establishment registration withdrawn or suspended;

B. The applicant shall submit the following nonrefundable fee with the completed registration form:

1. Slaughterhouse, \$100;
2. Wholesale processing establishment, \$25 for each business location.

C. If a registered slaughterhouse or processing establishment operator does not renew the registration within 30 days before the expiration date, the operator may renew within 90 days after the expiration date provided an additional, non-refundable \$50 accompanies the registration fee.

D. Registrations are not transferable and shall be valid for 1 year and expire on December 31, except as otherwise provided in R3-2-104 and 3 A.A.C. 1.

E. The registered slaughterhouse or processing establishment operator shall maintain records of all ratite transactions for a minimum of 1 year. Upon request, the registered slaughterhouse or processing establishment operator shall permit the State Veterinarian, or the State Veterinarian's designee, to inspect any slaughterhouse or processing establishment records pertaining to ratites.

R3-2-103. Application for Slaughter or Processing Official Inspection, Pre-official Inspection Evaluation Fee

A. A registered slaughterhouse or processing establishment operator wishing to be granted official inspection shall apply with the Department for a pre-official inspection evaluation.

B. Within 30 days of the application for the official inspection, the Department shall inspect the applicant's slaughterhouse or processing establishment for compliance with R3-2-105 or R3-2-109. If the slaughterhouse or processing establishment does not meet the minimum requirements, additional inspections shall be required.

C. The Department shall send the applicant an invoice for the pre-official inspection evaluation fees. These fees shall include the

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time to and from the State Veterinarian's office at \$47.50 per hour, and travel reimbursement as prescribed by A.R.S. § 38-623(C) and (D).

- D.** If the slaughterhouse or processing establishment is in compliance with R3-2-105 or R3-2-109, the Department shall assign a "P" number indicating the specific slaughterhouse, or the specific processing establishment.
- E.** Pre-official inspection evaluations for continuance of official inspection are valid for 1 year, except as otherwise provided in R3-2-104 and 3 A.A.C. 1.

R3-2-104. Denial, Withdrawal, and Suspension of Official Inspection

- A.** The Director may deny a slaughterhouse or processing establishment official inspection if:
1. The registration application does not contain the information required by R3-2-102(A).
 2. The applicant previously has had a slaughterhouse or processing establishment registration withdrawn or suspended and has not shown that the applicant can and will comply with the provisions of this Article.
 3. The slaughterhouse or processing establishment official inspection reveals contamination levels above those prescribed by this Article, or
 4. Noncompliance with R3-2-105 or R3-2-109.
- B.** The Director may suspend or withdraw official inspection if the slaughterhouse or processing establishment operator:
1. Files an application form that is false or misleading.
 2. Fails to keep or make available records for 1 year.
 3. Fails to remit the prescribed fees.
 4. Fails to notify the Department of any changes in ownership or management.
 5. Fails to maintain its equipment and facilities in a clean and sanitary condition, or
 6. Marks or labels ratite products or containers in a false or misleading manner.
- C.** The Director may suspend or withdraw official inspection if the slaughterhouse:
1. Fails to comply with the tagging requirements prescribed by R3-2-106(C), or
 2. Fails to follow humane handling and stunning requirements prescribed by R3-2-107(A)(1) and (2).
- D.** The Director shall notify the operator by certified mail of the decision to deny, withdraw, or suspend the slaughterhouse or processing establishment official inspection and shall set forth the reasons for the decision.
- E.** Operators who have received notice that their official inspection is denied, withdrawn, or suspended may request a hearing pursuant to 3 A.A.C. 1.
- F.** The Director may order the operator to take appropriate action to correct any violation in subsections (A), (B), and (C).

R3-2-105. Slaughterhouse Requirements, Official Inspection Fee

- A.** A slaughterhouse shall be kept in a clean and sanitary condition to ensure that contamination of carcasses in the evisceration area with dander or other contaminants is precluded. A slaughterhouse shall maintain the following equipment and practices to ensure the production of a wholesome carcass free from contamination.
- 1. General.**
- a. A metal knocking box or concrete box with a metal door to confine the animal before stunning;
 - b. A separately drained, dry landing area at least 5 feet wide in front of the knocking box.
 - c. A curbed-in bleeding area at least 8 feet wide and 7 feet long, located so blood will not splash upon

stunned animals lying the dry landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least 6 inches high and 6 inches wide.

- d. Rails placed so the lowest part of the ratite is at least 12 inches from the floor.
 - e. A header rail placed at least 3 feet from the adjacent wall.
 - f. A 2-level viscera inspection truck for evisceration, unless a moving top viscera inspection table is used.
 - g. A suspect pen for the humane restraint of ratites to allow the inspector to examine suspect ratites.
 - h. A separate pre-evisceration area for stunning and bleeding, air injection, and the picking process.
- 2. Pens**
- a. Holding pens surfaced with an impervious material, sloped to drains. A curb shall be installed around the outside of the holding pens to prevent the wash from escaping. Water under pressure shall be available for washing the holding pens.
 - b. Holding and shackling pens located outside of, and separated from, the slaughtering department.
 - c. Feeding pens at least 300 feet from the plant and not located in front of the plant.
- 3. Disposal of blood.** When blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises.
- 4. Equipment and Utensils.**
- a. Equipment constructed of metal and easily cleaned. Cutting boards shall be of synthetic material, but equipment, such as the framework of boning or cutting tables, offal racks and trees, product storage racks, and product trucks shall be of metal construction. Rusty or worn-out equipment shall be replaced.
 - b. Equipment cleaned thoroughly following each day's operations. A clear, colorless, odorless, tasteless, edible mineral oil may be used on metal equipment, such as choppers, grinders, mixers, tables, meat trucks, offal racks, hooks, and trolleys. Scale shall not be permitted to accumulate on metal equipment.
 - c. Receptacles for cleaning and sterilization of tools and equipment with drains to permit draining and cleaning of the receptacles and placed at convenient locations in the slaughtering department. Water wasting from equipment shall not flow across the floor.
 - d. Shovels used for transferring ice or other edible materials from 1 another shovel shall not touch the floor.
- 5. Coolers.** A separate chill cooler and holding cooler may be provided or both may be combined in 1 room. The chill cooler shall have concrete floors sloped to a drain. Walls shall be smooth, free of cracks, light-colored, and impervious. The room shall be sealed. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant metal. Rails shall be spaced at least 2 feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact with the carcasses. When overhead refrigerating facilities are provided, insulated drip pans connected to the drainage system shall be installed beneath them. If wall coils are installed, a drip gutter of impervious material and connected to the drainage system shall be installed beneath the coils. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area shall be separately drained. Other coolers shall have concrete floors.

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- Walls shall be smooth, free of cracks, light-colored, and impervious. The room shall be sealed.
6. Ventilation and Lighting.
 - a. Natural ventilation may be supplemented by artificial means. Ventilation shall be sufficient to assure the absence of dust, masking odors, or steam vapors. To ensure adequate lighting at all times and at all places, natural lighting shall be supplemented by well-distributed artificial lighting.
 - b. A minimum of 100 foot candles of shadow-free lighting with a minimum color-rendering index of 85 at all inspection sites.
 7. Inedibles.
 - a. All inedibles in containers with tight-fitting lids while in edible product areas or edible product coolers. All inedibles shall be denatured to preclude their use for human consumption.
 - b. Requests for permission to render shop scraps and outside dead animals shall be made to the inspector who shall grant or deny the request.
 8. Other edible products departments.
 - a. Floors, walls, and ceilings in the edible products departments of the plant constructed of material that can be readily cleaned. Wooden structures and equipment shall be kept at a minimum. Floors requiring drainage shall be constructed of dense concrete or floor brick laid on a concrete base. The interior walls and, where practical, ceiling surfaces shall be smooth and flat. Walls shall be constructed of glazed tile, smooth Portland cement plaster, or other impervious material. Walls shall be free of cracks and crevices and, where brick or tile is used, the mortar joints shall be flush with the surface of the walls. Walls shall be light colored.
 - b. Floors of the plant well drained with a slope of not less than 1/4 inch to the foot to drainage inlets. The floors shall be smooth, impervious, and in good repair; they shall be free from cracks and depressions that could hold floor liquids. Floors shall not be made of wood. Junctions of floors and walls shall be covered.
 - c. Walls, ceilings, beams, and hangers cleaned. Rails may be oiled instead of painted. Rust and scale shall be removed from hangers and meat trolleys. Smooth Portland cement plaster walls shall not be painted.
 9. Drainage.
 - a. Floors that require flushing during operations with sloped floor drains to carry off the floor drainage. Each floor drain shall be equipped with a deep-seal trap. Drainage lines shall be vented to the outside in accordance with local plumbing codes. A drain line shall be at least 4 inches in diameter.
 - b. Sewage may be disposed of into a municipal sewer system, if permitted by local ordinance, or it may be disposed of into a stream or other similar body of water, provided that:
 - i. This method is acceptable to health authorities having jurisdiction over sewage disposal, and
 - ii. The flow of the stream or other body of water is sufficient to carry the sewage away from the plant at all seasons of the year. When cesspools are used, they shall be of sufficient size to receive the sewage from the plant at all times, and constructed so they do not create a nuisance by breeding flies or other insects.
 - c. Grease recovery basins shall not mask odors or create a harborage for pests.
 10. Water Supply, Wash Basins, Sterilizing Facilities.
 - a. Hot and cold running water, under pressure, available at all parts of the plant and that conforms with the requirements of the Department of Health Services. The hot water used for cleaning inspection equipment and other equipment, floors, and walls that are subject to contamination by the dressing or handling of diseased carcasses, their viscera, and other parts, shall be at least 180 F. Thermometers shall be installed to show the temperature of the water at the point of use. A cleanup hose shall be provided.
 - b. The hot water used for cleaning rooms and equipment other than those mentioned in subsection (A)(10)(a) shall be delivered under pressure and at least 140°F.
 - c. At least 1 foot-pedal operated wash basin placed in or near each dressing room. These wash basins shall be equipped with running hot and cold water, delivered through a combination mixing faucet with an outlet 12 inches above the rim of the bowl. The drainage outlet shall lead directly into the drain of the sewage system. Soap, paper towels, and a receptacle for dirty paper towels or other trash shall be convenient to the wash basin.
 - d. One or more foot-pedal operated wash basin located in the slaughtering department, and 1 or more in any other place in the establishment as may be essential to ensure cleanliness of all persons handling products. These wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet 12 inches above the rim of the bowl. The drainage outlet shall lead directly into the sewage lines. Soap, paper towels, and a receptacle for dirty paper towels or other trash shall be convenient to the wash basin.
 - e. Water for sterilizing purposes maintained at a temperature of at least 180°F. One or more sterilizing receptacles of rust-resisting, impervious material shall be placed at convenient locations in the slaughtering department for the sterilization of contaminated implements or implements used on a diseased carcass or part of a carcass. The sterilizer shall be equipped with a cold water and steam line, or other means to maintain water at a minimum of 180°F, during all slaughtering operations. The sterilizer shall contain a drain so water may be completely drained for daily cleaning of the sterilizer. Equipment such as boilers and water heaters shall not be located in the slaughtering department or in any edible products department. To prevent back siphonage, vacuum breakers shall be provided on all steam and water lines when the open ends are submerged or connected to equipment.
 11. Protection Against Flies, Rodents, or Other Vermin.
 - a. Kept free of flies, rats, mice, roaches, and other pests or vermin. The slaughterhouse shall be constructed to prevent entrance of rodents to the premises and to eliminate their breeding places in surrounding areas and in the establishment. The plant shall be constructed to eliminate roach and other insect harbors. Windows, doors, and other openings to the plant shall have insect screens or other measures to prevent entrance of flies or other insects. The screens shall be kept in good repair. Sprays containing resid-

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ual-acting chemicals shall not be used in edible products departments.

- b. Animal-handling facilities such as stock pens and runways cleaned as often as necessary. Manure or other waste materials shall not be permitted to accumulate at or near the plant.

12. Toilet and hand-washing facilities with both hot and cold running water. Separate facilities shall be provided when both sexes are employed.

B. Sterilizing Equipment.

1. Implements contaminated by contact with diseased or adulterated carcasses shall be cleaned and sterilized.
2. Equipment used in dressing a carcass, such as viscera trucks or inspection tables, shall be sterilized as prescribed by subsection (A)(10)(e).

C. Slaughtering Other Species.

1. The kill floor and equipment shall be completely washed down with hot water and soap. All contact equipment shall be sterilized before any other species is slaughtered.
2. Soap and water shall be used to clean all product contact surfaces following ratite slaughter and processing.
3. Plant personnel shall change protective clothing and shall wash their hands between the slaughter of ratites and other species.

D. A slaughterhouse shall reimburse the Department for the actual time spent conducting the official inspection at the following rates:

1. Department inspector, \$30 per hour; or
2. Contract veterinarian, \$63 per hour; or
3. Clerical work per inspector day, \$4; and
4. Travel, if applicable, as prescribed in A.R.S. § 38-623(C) and (D).

E. If an inspector is not normally at a slaughterhouse, the plant manager shall contact the Department 48 hours before ratite slaughter and request that an inspector be provided to conduct the official inspection and witness the slaughtering procedure. If an inspector is not available, the Department shall provide an inspector at the earliest possible date. The plant manager may request the Department to hire a contract veterinarian to conduct the official inspection and witness the slaughtering procedure.

F. A slaughterhouse shall pay the cost of sampling.

R3-6-106. Ante-mortem Inspection Procedures

A. Inspection Procedure

1. An inspector shall observe each ratite from both sides, at rest and in motion, to determine whether abnormal conditions exist. Abnormal conditions include loose stools characterized by excessive fecal stains around the vent, a pasty vent, or both, bloody diarrhea, regurgitation of food, disinclination to rise from sternal recumbency, and weight loss particularly notable over the back and thighs.
2. Any ratite exhibiting physiological or pathological disease characteristics or other abnormal conditions shall be identified as a suspect, segregated, and held for further inspection by the inspector.

B. Ratite Washing. If the ratite is washed before slaughter, sufficient time shall be allowed after washing for the ratite to be dry enough to prevent dripping when stunned.

C. Other Marks and Devices.

1. Suspect.

- a. Ratites shall be handled as suspects if they show signs of abnormalities or diseases, such as dirty, ruffled feathers; swollen sinuses; eye discharge; nostril discharge; diarrhea; swellings; lameness; ascites; or cachexia.
b. All ratites identified as suspect shall be tagged by

plant personnel with a serially numbered metal or plastic leg band or tag bearing the term "Arizona Suspect" except, if segregated and handled as suspect, ratites affected with conditions to the extent that lesions would be readily detected on post-mortem inspection need not be individually tagged on ante-mortem inspection need not be individually tagged on ante-mortem inspection with the "Arizona Suspect" tag.

- c. Suspect ratites showing signs of abnormalities or diseases shall be segregated into designated suspect pens for examination by an inspector.

- d. A ratite shall be slaughtered and retained as a suspect until final post-mortem inspection by a contract veterinarian or a Department veterinarian if the inspector concludes the ratite is affected with a disease or condition that may cause condemnation of the carcass on post-mortem inspection.

- e. Each ambulatory suspect shall be retained and slaughtered at the end of the day's operation.

2. Condemned.

- a. Ratites determined to be condemned on ante-mortem inspection shall be identified as Arizona Condemned in a manner approved by the State Veterinarian, decharacterized, and disposed of in a manner that precludes use as human or animal food.

- b. Condemned ratites shall either be promptly or humanely killed and disposed of by plant employees or, with permission of the State Veterinarian, held for observation or treated, or both, in separate facilities on the premises. Following recovery, the held ratite may be reexamined by an inspector. If normal, the held ratite may be passed for slaughter as suspect with the permission of the State Veterinarian.

- c. Dead-on-arrival (DOA) carcasses shall be tagged "Arizona Condemned," decharacterized, and disposed of in a manner that precludes use as human or animal food.

- d. Carcasses shall be decharacterized with 1 of the following denaturing agents:

- i. Charcoal (finely powdered) with a minimum 1 lb. per 100 lbs. meat.
ii. F-D & C Blue 2.
iii. F-D & C Green 3, or
iv. Liquid charcoal.

3. Downers.

- a. All ratites termed downers shall be identified as Arizona Suspect.

- b. All downers, including those showing signs of trauma, shall be examined by an inspector. The nature and extent of the examination shall be sufficient to determine whether the ratite should be condemned, passed for slaughter as suspect, or held for further observation.

- c. Downers shall be handled as expeditiously as possible.

- d. Carcass disposition for those passed for slaughter shall be based on ante- and post-mortem findings and, when necessary, on laboratory results.

4. Poisoning. Ratites exhibiting signs of drug or chemical poisoning shall be withheld from slaughter. The State Veterinarian shall be immediately notified as to the history, number of ratites involved, symptoms, and other pertinent information.

5. Reportable Diseases.

- a. If a reportable disease is suspected, the inspector

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shall notify the plant management and immediately inform the State Veterinarian.

- b. Ratites with or suspected of having a reportable disease may be removed from the plant at the producer's request with the approval of the State Veterinarian. These ratites are subject to federal and state laws on disease control and eradication.

D. Electronic Identification Device (EID) Certification

- 1. The producer shall certify whether the producer or a previous owner used an EID to identify a ratite. If an EID was used, the producer shall state the location of the device in each ratite.
- 2. If the ratite does not have an EID, the ratite producer shall certify the absence of the device in each ratite. The plant manager shall provide the certification to the inspector at the time the ratite is presented for ante-mortem inspection.
- 3. Prior to skinning, the plant manager shall scan all ratites to determine the presence and location of the EID.
- 4. The EID shall be removed and disposed of to prevent its entry into edible product, edible rendered product, or any rendered product destined for use in animal foods. Carcasses known to contain EIDs shall not pass post-mortem inspection until the device is removed and presented to the inspector. If an EID cannot be located, the part of the carcass where the device is removed and presented to the inspector. If an EID cannot be located, the part of the carcass where the device was implanted shall be condemned and placed in a container marked "condemned." This condemned part shall enter normal rendering operations and shall not be used in processing animal foods. Unless the part of the carcass where the EID was implanted is condemned, none of the carcass will pass inspection.

- E. Drug Use Certification. The producer shall complete and sign a Drug Certification For Ratites form provided by the Department stating whether the ratite has been treated with, or otherwise given vaccines or medications.

R3-2-107. Slaughter Procedures

A. Pre-evisceration

- 1. Humane Handling.
 - a. All ratites shall be handled in a manner that prevents needless suffering.
 - b. Downer ratites shall not be dragged while conscious.
 - c. Feed and water shall be supplied to all ratites held more than 24 hours.
- 2. Stunning. Ratites shall be rendered unconscious by an electrical or captive bolt stunner, hobbled, or shackled after stunning, and hoisted from the dry landing area by 1 or both legs.
- 3. Bleeding.
 - a. A cut shall be made through the thoracic inlet to sever the heart or major arteries and veins exiting the heart to ensure complete bleeding.
 - b. For emus, immediate removal of the head is an acceptable alternative to severing the heart or major arteries and veins exiting the heart. The procedure for head removal prescribed in subsection (B)(2) shall be followed if this option is chosen.
- 4. Feather Removal.
 - a. Feathers may be removed by dry hand picking on the kill floor (after stunning) if it can be done without contaminating the kill floor with dander and feather dust. The floor shall remain reasonably free of feathers.
 - b. Feathers may remain on the wing tips and tail if the wing tips and tail are removed during skinning. All

removed feathers shall be stored in containers away from the exposed carcass. If required by the inspector, the skin shall be rinsed to remove loose dander and dust.

- c. Feathers may be picked before or after air injection.
- d. Feather follicles remaining on the carcass after skinning shall be removed by trimming.
- e. De-feathered carcasses shall be transferred to the evisceration area. Plant employees who work in the pre-evisceration area shall wash their hands, arms, and apron to remove dust and dander before beginning the skinning and evisceration operations. If necessary to reduce contamination from dust and dander during evisceration, the inspector may require a washdown of the kill floor before evisceration begins.

5. Air Injection.

- a. Compressed air injection shall be conducted in a sanitary manner that includes air filtration and injection needle disinfection. Air filtration shall consist of not less than 2 stages. An initial stage of air filtration shall occur at or near the use point and consist of an aerosol or coalescing filter, capable of filtration to not more than 0.75 microns, for the removal of oil and water. A subsequent stage of air filtration shall occur at or near the point the needle hose attached to the air line and consist of a particulate filter capable of filtration to not more than 0.3 microns. The filters shall be maintained by inspecting regularly to ensure they are working properly, and cleaning or replacing when necessary. The injection needle shall be disinfected by placement in water that is not less than 180°F. for at least 10 seconds immediately before each injection.
- b. When air is injected, the neck and the vent shall be tied after air injection and before skinning to minimize leakage of cloacal material in accordance with subsection (B)(1). If leakage occurs, the carcass shall be washed before skinning.

B. Skimming and Evisceration.

- 1. Venting/Bunging. The vent shall be excised, in a manner that prevents contamination from cloacal material. After the attachments to the vent are loosened, the vent shall be drawn from the carcass, encased in a plastic bag, and tied.
- 2. Head Removal.
 - a. If the head is removed immediately after stunning, the head shall be removed by cutting the skin of the neck to expose the esophagus and trachea. The esophagus shall be loosened from the neck, severed from the head, stripped from the neck, and tied.
 - b. If the neck is saved as edible product, the head shall be removed and placed adjacent to the viscera inspection station after the skin of the head is excised to the ventral part of the beak. If the neck is not saved as edible product, the neck with the head attached may be skinned, severed, and placed adjacent to the viscera inspection station. The cervical vertebrae may be sawed through to remove the head or neck, or both.
 - c. When the breast plate is removed to facilitate evisceration, tying the esophagus may not be required. The head and trachea shall be removed from the neck and presented for inspection.
 - d. Identification of the neck, head, and corresponding carcass shall be maintained until final inspection of the ratite and the EID certification prescribed in R3-

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- 2-105(D)(3) and (4) is completed. The head shall be handled so it will not cause contamination of edible parts.
3. Skinning.
- a. Leg and Foot Removal.
- i. If the feet, toes, and lower legs are removed before proceeding with the skinning operations, the skin shall be carefully reflected at a point distal to the hock joint, and the leg shall be sawed through, approximately 3 inches below the hock, to remove the lower leg and foot. Care shall be taken not to contaminate the exposed neck with dirt and dander from feet and legs.
- ii. If the feet and lower legs are removed after skinning, the carcass shall be hung by a toe and reflected radially at the toe joint, the complete leg shin shall be removed as a single piece with the body skin. The lower leg and foot may then be removed below the hock as described in subsection (B)(3)(a)(i).
- iii. A sterilized chain may be attached proximal to the tibiotarsal-tarsometatarsal (hock) joint for hanging the carcass, or 2 separate hooks may be used for hanging the carcass by the tendons.
- b. Skin Removal.
- i. Skinning may be started on the cradle and finished on the hoist. The skin shall be opened lengthwise on the ventral midline. The skin shall be reflected away from the carcass to prevent contamination of exposed tissues. Care shall be taken to prevent carcass contamination with dander, feathers, feces, urine (in ostriches), or other extraneous material.
- ii. Remaining fatty tissue that contains pinfeathers which pulled through the skin during the skinning process may be saved only as inedible product. The fatty tissue containing the pinfeathers shall be removed by trimming. Transferring fat from a fat carcass to a lean carcass is prohibited.
- iii. If contamination occurs during the handling of carcasses, organs, and other parts, the contaminated carcass, organs, or other parts shall be promptly removed by the plant employee in a manner approved by the inspector.
- iv. Carcasses shall not contact each other from the bleeding area to the last inspection point.
4. Neck Removal. If the neck touches the floor, the contaminated portion shall be removed and identified to the carcass. The contaminated portion shall be condemned.
5. Evisceration.
- a. Evisceration begins with a midline abdominal incision caudal to the breast plate. The sternum and, in ostriches, the pubic symphysis, shall be split with a brisket saw or other device approved by the inspector. As an alternate procedure the ribs may be severed on each side and the breast plate pulled down to expose the thoracic viscera. If the breast plate is removed by sawing through the ribs, the saw shall be directed toward the outside of the thorax to prevent damage to the viscera.
- b. The pelvis (pubic symphysis) of the ostrich shall be spread for visibility after being split to aid in preventing puncturing the urinary bladder at the time the vent is excised, bagged, and tied. The bagged and tied vent shall be pulled through the pelvis and abdominal cavity.
- c. Part of the abdominal walls may be removed before evisceration to increase visibility of internal organs. Evisceration shall be done on the hoist.
- d. The liver, spleen, intestinal tract, testes (or ovary and oviduct), and lungs shall be reflected in a caudal to cranial direction by cutting and blunt dissection without causing contamination of any part of the carcass or edible product. Care should be taken to avoid penetrating the gut.
- e. The intestinal tract, oviduct, and ovary shall be placed in a separate tray for inspection. The heart, lungs, trachea, testicles, liver, and spleen shall be placed in a separate tray. The kidneys shall be observed in their pelvic crypts on the carcass by the inspector before their removal from the crypts by the eviscerator. They shall be reinspected in the tray with the intestinal tract.
- f. Evisceration procedures different from those described in subsections (B)(5)(a) and (b) may be acceptable provided they are approved by the inspector and do not alter the inspection procedure.
6. Trimming and Carcass Washing. The carcass shall be trimmed of all defects and visible contamination. After the carcass inspection has been completed, the carcass shall be washed.
7. Contamination. Carcasses or parts of carcasses contaminated by contact with diseased carcasses shall be condemned unless all contaminated tissues are removed promptly.
8. Retained Product. When product is retained for further inspection, identity and wholesomeness shall be preserved. Identity shall be maintained by keeping the product under department lock or seal, or by using retained tags. Product wholesomeness shall be maintained by preventing contamination, dehydration, and decomposition with plastic bags or other refrigeration or freezing means. If necessary, samples of retained product may be sent to the laboratory.
- R3-2-108. Post-mortem Inspection Procedures**
- A. The inspector shall inspect each carcass, all parts except feathers and toes, and accompanying viscera. Any carcass, part, or viscera exhibiting physiological or pathological disease characteristics that might render the carcass or any part adulterated shall be identified as Arizona Retained and held for further disposition by the State Veterinarian or by a contract veterinarian. The identity of the carcass, including all parts, shall be maintained until a final inspection has been completed.
- B. Each carcass and all organs and other parts of carcasses that are not diseased, adulterated, or naturally inedible shall be passed for human food and stamped with the official species inspection brand.
- C. The carcass or parts of a carcass of all ratites inspected at a registered slaughterhouse and found at the time of post-mortem inspection, or at any subsequent inspection, to be affected with any of the diseases or conditions named in this Article shall be disposed of in accordance with the instructions in subsection (F) pertaining to the disease or condition. The inspector shall decide the manner of disposal for each carcass, organ, or other part not specifically covered by this Article. If the inspector is in doubt concerning the disposition, the State Veterinarian shall make the final determination. Specimens from the carcass may be sent to a laboratory approved by the State Veterinarian for histopathological, microbiological, or toxicological diagnosis.

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D. Inspection Procedures.

1. Digestive System. The inspector shall observe the esophagus, proventriculus, ventriculus (gizzard), small intestine (including the cecum and pancreas), the rectum, cloaca, urinary bladder (in ostriches), and vent.
2. Head. The inspector shall inspect the head by incising the skin of the throat up to the ventral part of the beak. The skin and tissues shall be reflected laterally exposing the tissues of the head. Any abnormalities shall cause the carcass to be identified as suspect. The neck shall be inspected with the head if both were removed together.
3. Heart. The inspector shall palpate, open, and observe the heart for abnormal conditions. The cut surfaces of the muscle, inner surfaces, and valves shall be observed.
4. Kidney. The inspector shall observe the kidneys in their crypts (of the synsacrum) on the carcass and observe, and palpate them in the intestinal tray after carcass inspection. After the inspector examines the kidneys on the carcass, a plant employee shall remove the kidneys from the carcass and present them for further inspection on the lower tray of the viscera truck. After inspection of the kidneys is complete, the kidneys shall be condemned as inedible.
5. Liver. The inspector shall observe, and palpate the liver for any swelling, abscess, nodule, or color change. The gall bladder shall be observed on an emu or rhea.
6. Lungs and Trachea. The inspector shall observe the lungs for any abnormal condition, such as thickening, granulomatous condition, abnormal exudate, discoloration, nodule, and abscess. The trachea shall also be observed.
 - a. Ratite lungs shall not be saved for use as human food. They shall be maintained under inspector control until properly disposed of.
 - b. Lungs not condemned may be used in the preparation of animal food at the registered slaughterhouse with the approval of the inspector, or they may be distributed from the slaughterhouse in commerce for animal food manufacturing purposes or to pharmaceutical manufacturers for pharmaceutical use, if they are labeled as "Inedible Ostrich Lungs - for Animal Food or Pharmaceutical Manufacturing Only."
7. Spleen. The inspector shall observe and palpate the spleen.
8. Viscera. The inspector shall palpate the viscera, visceral organs, and internal fat for abnormal swelling, coloration change, nodule, thickening, abscess, or other inflammatory process. Incisions shall be made when necessary for further inspection.

E. Diseases or Conditions to be Considered in Post-mortem.

1. Airsacculitis. The abdominal and thoracic air sacs shall be observed before, during, and after evisceration. Carcasses with evidence of extensive involvement of the air sacs with airsacculitis or those showing airsacculitis along with systemic changes shall be condemned. Less affected carcasses may be passed for food after complete removal and condemnation of all affected tissues including the exudate.
2. Anemia. Carcasses of ratites too anemic to produce wholesome meat shall be condemned.
3. Anthrax.
 - a. Carcasses found before evisceration to be affected with anthrax shall not be eviscerated but shall be retained, condemned or disposed of in a manner that precludes use as human or animal food.
 - b. After evisceration, any carcass or part, including

hides, feathers, viscera and contents, blood, or fat of a ratite affected with anthrax, shall be condemned and immediately disposed of in a manner that precludes use as human or animal food.

- c. Any part of a carcass that is contaminated with anthrax-infected material through contact with soiled instruments shall be immediately condemned and disposed of in a manner that precludes use as human or animal food.
 - d. Any portion of the slaughtering department contaminated through contact with anthrax-infected material, including the bleeding area, gambrelling bench, floors, walls, posts, platforms, saws, cleavers, knives, hooks, and employees' boots and aprons, shall be cleaned immediately and disinfected with a disinfectant approved by the State Veterinarian.
 - e. When a disinfectant solution is applied to equipment that will afterwards contact product, the equipment shall be rinsed with potable water before the contact.
4. Arthritis.
- a. Carcasses affected with arthritis that is localized and not associated with systemic change may be passed for human food after removal and condemnation of all affected parts.
 - b. Affected joints shall be removed and condemned. To avoid contamination of the meat that is passed for human food, the joint capsule shall not be opened until after the affected joint is removed.
 - c. Carcasses affected with arthritis shall be condemned when there is evidence of systemic involvement.
5. Biological Residues.
- a. Carcasses, organs, or other parts of carcasses shall be condemned if the inspector determines they are adulterated because of the presence of biological residues.
 - b. Ratites suspected of having been treated with or exposed to any substance that may impart a biological residue that would make the edible tissue unfit for human food or otherwise adulterated shall be identified as Arizona Suspect. These ratites may be released from the slaughterhouse with permission from the State Veterinarian. When the metabolic processes have reduced the residue sufficiently to make the tissues fit for human food and otherwise not adulterated, the ratite may be returned for slaughter. To aid in determining the amount of residue present in the tissue, the inspector may permit the slaughter of any affected ratite for the purpose of collecting tissue for analysis of the residue. This analysis may include the use of in-plant screening procedures designed to detect the presence of antimicrobial residues.
 - c. All carcasses, edible organs, and other parts, in which biological residues are found that render the articles adulterated shall be marked as "Arizona Condemned" and disposed of in a manner acceptable to the Department, kept separate from all other condemned carcasses or parts, and not used for animal food.
6. Bruises. Any carcass or part of a carcass that is badly bruised shall be condemned. Parts of a carcass that show only slight reddening from a bruise may be trimmed and passed for food.
7. Central Nervous System Disorders. Ratites with central nervous system disorders such as depression, drowsiness,

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- weakness, coma, staggering, circling, or muscular tremors shall be condemned.
8. Contamination.
- a. At the time of any inspection, each carcass or part of a carcass that is adulterated due to contamination shall be condemned, except that any carcass or part of a carcass that may be made unadulterated by reprocessing need not be condemned if reprocessed under the supervision of an inspector and found to be not adulterated after reinspection.
- b. Any carcass accidentally contaminated during slaughter with digestive tract contents shall not be condemned if promptly reprocessed under the supervision of an inspector and found to be not adulterated after inspection. Contaminated surfaces shall be removed only by trimming.
- c. Carcasses contaminated by volatile oils, paints, poisons, gases, or other substances that render the carcasses adulterated shall be condemned. Any organ or other part of a carcass that has been accidentally mutilated during processing shall be condemned, and if the whole carcass is affected, the whole carcass shall be condemned.
9. Decomposition. Carcasses deleteriously affected by post-mortem change shall be disposed of as follows:
- a. Carcasses that have reached a state of putrefaction or stinking fermentation shall be condemned;
- b. Carcasses affected by types of post-mortem change that are superficial in nature may be passed for human food after removal and condemnation of the affected parts.
10. Drug Withdrawal. Ratites that receive a drug or chemical and are presented for slaughter before the required withdrawal period is complete shall be withheld from slaughter until the withdrawal period elapses.
11. Emaciation. Carcasses too emaciated to produce wholesome meat, and carcasses that show a serous infiltration of muscle tissue, or a serous or mucoid degeneration of fatty tissue, shall be condemned. A gelatinous change of the fat of the heart of well-nourished carcasses and mere leanness shall not be classed as emaciation.
12. Emergency Slaughter.
- a. Emergency slaughter may be allowed with the permission of the State Veterinarian.
- b. If emergency slaughter is granted, the ratite shall be marked "Not For Sale" and no inspection will be required. Meat from these ratites shall be used only by the owner.
- c. Sick or dying ratites, or ratites treated with a drug or chemical and presented for slaughter before the required withdrawal period, are not covered by emergency slaughter provisions.
13. Escaped Ratites: Control. Tranquilizers shall not be used on ratites destined to slaughter. If a tranquilizer is used, the inspector shall consult the State Veterinarian for handling and disposition of involved ratites.
14. Inflammatory Conditions. Any organ or other part of a carcass that is affected by inflammation shall be condemned; when the lesions are of a character or extent as to affect the whole carcass, the whole carcass shall be condemned.
15. Livers with the following diseases or abnormalities shall be condemned:
- a. Inflammation, abscess, necrosis, cirrhosis, or tumors;
- b. Livers with 1 large cyst or several small cysts;
- c. Discoloration caused by bile duct disorders;
- d. Enterohepatitis; or
- e. Contamination from intestinal contents or noxious materials.
16. Lungs and Trachea Inspection. Lungs affected with disease or pathology and lungs adulterated with chemical or biological residue shall be condemned and identified as Arizona Inspected and Condemned. Condemned lungs may not be saved for animal food.
17. Muscular Inflammation, Degeneration, or Infiltration.
- a. If muscular lesions are found to be distributed so removal is impractical, the carcass shall be condemned.
- b. If muscular lesions are found to be distributed so removal is practical, the following requirements shall govern disposal of the carcasses, edible organs, and other parts of carcasses showing the muscular lesions:
- i. If the lesions are localized so that the affected tissues can be removed, the unaffected parts of the carcass may be passed for human food after the removal and condemnation of the affected portion.
- ii. If part of the carcass shows numerous lesions, if complete extirpation is difficult and uncertainly accomplished, or if the lesion renders the part unfit for human food, the part shall be condemned.
- iii. If the lesions are slight or insignificant from a standpoint of wholesomeness, the carcass or parts may be passed for use in the manufacture of comminuted cooked product after removal and condemnation of the affected portions.
18. Myiasis. Ratites with wounds infested with maggots shall be segregated and maggot specimens submitted to the State Veterinarian to identify possible screwworm infestation.
19. Neoplasms.
- a. An individual organ or other part of a carcass affected with a neoplasm shall be condemned.
- b. If there is evidence of metastasis or that the general condition of the ratite has been adversely affected by the size, position, or nature of the neoplasm, the entire carcass shall be condemned.
- c. Carcasses of ratites affected with any 1 or more of the several forms of the avian leukosis complex shall be condemned.
20. Nutritional Problems.
- a. The long bones of ratites may exhibit changes due to hormonal imbalance, nutritional deficiency or excess (osteomyelosclerosis in laying birds). Carcasses showing such bony changes with no other pathology may be passed for food.
- b. Lesions resulting from visceral gout or chalk-like deposits in joints or pleura, shall be removed by trimming. Carcasses with visceral gout lesions distributed so that removal is impossible or impractical shall be condemned.
21. Parasites. Organs or other parts of carcasses infested with parasites or which show lesions of parasite infestation shall be condemned. If the whole carcass is affected, the whole carcass shall be condemned.
22. Pigmentary Conditions.
- a. Carcasses showing generalized pigmentary deposits shall be condemned.
- b. The affected parts of carcasses showing localized

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- pigmentary deposits to be unwholesome or otherwise adulterated shall be removed and condemned.
- c. Any part of a carcass that is green-struck shall be condemned. If the carcass is so extensively affected that removal of green-struck parts is impracticable, the whole carcass shall be condemned.
23. Research Ratites Presented For Slaughter.
- a. No ratite used in any research investigation involving an experimental biological product, drug, or chemical shall be eligible for slaughter at a registered slaughterhouse unless:
- i. The operator of the slaughterhouse, the sponsor of the investigation, or the investigator submits to the State Veterinarian data or a summary evaluation of the data that demonstrates use of the biological product, drug, or chemical will not result in the ratite products being adulterated; and the State Veterinarian approves the slaughter.
- ii. Written approval by the State Veterinarian shall be furnished to the inspector before the time of slaughter.
- b. The inspector or the State Veterinarian may deny or withdraw the approval for slaughter of any ratite subject to the provision of this subsection when deemed necessary to ensure that all products prepared at the registered slaughterhouse are free from adulteration.
24. Synovitis. Carcasses with localized synovitis may be passed for food after removal of affected tissues; those with evidence of systemic effects shall be condemned.
25. Systemic Condition -- Septicemia or Toxemia.
- a. All carcasses affected so consumption of the products may cause food poisoning shall be condemned. This includes all carcasses showing signs of:
- i. Acute inflammation of the lungs, pleura, pericardium, peritoneum, or meninges;
- ii. Septicemic or toxemic disease, or an abnormal physiological state;
- iii. Gangrenous or severe hemorrhagic enteritis or gastritis;
- iv. Septic pericarditis; or
- v. Egg peritonitis or bacterial enteritis.
- b. When a systemic condition is evident, carcass and viscera shall be condemned.
26. Tuberculosis. Carcasses affected with tuberculosis shall be condemned.
- E. Final Trim and Rinse. (Carcass Inspection)
1. After evisceration, the external and cut surfaces of the carcass, the thoracic and abdominal-pelvic cavities, and kidneys in their crypts shall be observed for lack of or abnormal body fat, inflammation, or evidence of peritonitis or pleuritis before removing external fat.
2. The carcass shall be trimmed of all visible contamination and thoroughly rinsed with potable water. After rinsing, the inspector shall make a final inspection. Trimmed parts, including external fat containing pin feathers or feather quills, shall be placed in containers marked "inedible." The carcass shall be chilled to 40° after the final inspection unless further processing is done within 2 hours and subsequently chilled.
3. Carcasses showing evidence of having died of causes other than slaughter shall be condemned.
4. Carcasses shall be retained for further examination by a contract veterinarian when presented with conditions that
- may require complete condemnation of the carcass, or when an inspector is not certain of the pathological process and carcass disposition.
- G. Official Marks and Devices to Identify Inspected and Passed Products of Ratites.
1. The Arizona Inspected and Passed brand for carcasses or parts of carcasses shall include the following words between a double triangle: "Inspected, Passed, and A.D.A." The "P" number shall be contained within the inner triangle. Each carcass shall bear a label identifying the ratite species.
2. Carcasses bearing the approved Arizona Inspected and Passed brand and the appropriate "P" number may enter a registered processing establishment, as prescribed in R3-2-109, for further processing.
- H. Condemned Carcasses and Parts of Carcasses.
1. Carcasses and parts of carcasses condemned on post-mortem inspection shall be decharacterized with USDA-approved denaturing agents as prescribed in R3-105(C)(2)(d).
2. Condemned ratite carcasses and ratite meat may be used in the preparation of animal food with the approval of the State Veterinarian.
- a. True containers of ratite meat or meat products from condemned ratites for use in the preparation of animal food shall be identified with the following information in letters at least 3/4 inch in height, on all sides or in at least 2 places if the container has less than 4 sides:
- i. The species of ratite;
- ii. "Ratite meat from dead ratites for animal food only and not for human consumption," and "Denatured with _____";
- iii. The correct statement of net weight; and
- iv. The name and address of the registered processor.
- b. Before the denaturing agents are applied to pieces more than 4 inches in diameter, the pieces shall be freely slashed or sectioned. The denaturing agent shall be mixed thoroughly with all of the material to be denatured and shall be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. Denaturant shall be used to give the ratite meat, ratite meat by-products, raw animal fat, or rendered animal fats and oils, a distinctive color, odor, or taste so the denatured material cannot be confused with an article of human food. The application of any of the denaturing agents listed in this Section to the outer surfaces of molds or blocks of boneless ratite meat, ratite meat by-products, or ratite meat food products is adequate.
- c. All denaturing shall be done immediately upon condemnation of the ratite meat or product, after the ratite meat or product is prepared, or during preparation of animal food products.
- d. Every carrying container in which animal food obtained from a dead ratite is packaged shall bear the phrase "Animal Food Only" with markings on at least 2 sides, in letters 2 inches high. The exterior surface shall be sufficiently absorbent so that the markings will not become illegible during handling, storage, or transportation of the container.
- e. Sales of animal food obtained from a dead ratite are permitted only to kennels, zoos, and animal food manufacturing plants licensed by the Department.

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The purchaser and animal food manufacturing plant shall maintain records of these sales.

- f. A slaughterhouse that wishes to appeal a decision of an inspector as to carcasses or parts of carcasses that have been condemned, may appeal the decision to the State Veterinarian. If the slaughterhouse is not satisfied and wishes to make a further appeal, it may submit an appeal to the Director, pursuant to 3 A.A.C. 1, Article 1.

R3-2-109. Processing Establishment Requirements

A. To prevent adulterated ratite products from entering intrastate or interstate commerce, each processing establishment shall be kept in a clean and sanitary condition and shall meet the requirements prescribed by R3-2-105(A)(4) through (12) and the following requirements:

1. A ratite meat processor other than a slaughtering establishment shall have at least 1 daily inspection visit by an inspector when the establishment is in operation.
2. A ratite meat processor, mentioned in subsection (A)(1), and a slaughtering establishment with state meat inspection service that processes ratite meat or ratite meat food products shall:
 - a. Allow all ratite meats used for processing to be reinspected and condemned in whole or in part, if necessary.
 - b. Permit the inspectors to inspect all operations in the processing of ratite meat and meat food products to ensure that the operation is conducted in a clean and sanitary manner and in conformity with the provisions of this Article.
 - c. Use only "Arizona Inspected and Passed" products

or "USDA Inspected and Passed" products in the preparation of all ratite meat and ratite meat food products.

B. All non-meat products used in the preparation of a ratite food product shall be approved by the Food and Drug Administration (FDA).

C. Labeling and containers.

1. At the time they leave the establishment, all ratite products inspected at a registered processing establishment and found to be not adulterated shall bear, on their shipping containers and immediate containers, in distinctly legible form, the following:
 - a. The true name of the product, including the species name;
 - b. The ingredient statement if the product contains 2 or more ingredients;
 - c. The name and address of the processing company;
 - d. "Keep refrigerated" or "Keep Frozen" statement;
 - e. The Arizona Inspected and Passed Brand;
 - f. The net weight of the product; and
 - g. A reproduction of the FDA-approved safe handling statement.
2. The Department shall require nonconsumer packaged carcasses at the time they leave the establishment to bear the information listed in subsections (C)(1)(a) through (f).
3. No product shall be sold or offered for sale by any person in intrastate or interstate commerce under any name or other marking or labeling that is false or misleading, or in any container of a misleading form or size.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

ADMINISTRATION

PREAMBLE

1. Sections Affected

R9-22-339
R9-22-401
R9-22-402
R9-22-403
R9-22-404
R9-22-405
R9-22-406
R9-22-801
R9-22-801
R9-22-802
R9-22-802
R9-22-803
R9-22-803
R9-22-804
R9-22-804
R9-22-1001
R9-22-1002

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Repeal
New Section
Repeal
New Section
Repeal
New Section
Repeal
New Section
Amendment
Amendment

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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

R9-22-339:

Authorizing statute: A.R.S. § 36-2903(01)(B)
Implementing statute: A.R.S. § 36-2903(01)(K)

Article 4:

Authorizing statute: A. R. S. § 36-2903(01)(H)
Implementing statutes: A.R.S. §§ 36-2903(C)(2), 36-2903(D), 36-2903(N), and 36-2904(C)

Article 8:

Authorizing statute: A.R.S. § 36-2903(H)
Implementing statutes: A.R.S. §§ 36-2903.01(B)(4) and 36-2904(H)

Article 10:

Authorizing statute: A.R.S. § 36-2903.01(H)
Implementing statutes: A.R.S. §§ 36-2903(C)(10), 36-2903(G), 36-2903(01)(M), and 36-2915

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Debi Wells
Address: AHCCCS, Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop #4200
Phoenix, Arizona 85034
Telephone: (602) 417-4781
Fax: (602) 256-6786

4. An explanation of the rule, including the agency's reasons for initiating the rule:

R9-22-339: This newborn eligibility rule, is being amended to reflect the approval of a waiver by the Health Care Financing Administration. The federal waiver allows newborns of categorically eligible mothers to remain AHCCCS eligible for 1 year, regardless of the mother's continued eligibility.

ARTICLE 4: The proposed rules result from a 5-year rule review of this article which identified some non-substantive revisions which would make rule language clearer and more accurate. Language is deleted in R9-22-401 since it already appears, more appropriately, in a list of required contract provisions, at R9-22-402(A)(27). Language in R9-22-402 was revised to more accurately reflect the time records should be retained. The new language parallels language used in AHCCCS contracts with Health Plans. Current rule language would allow documents to be destroyed after 5 years, however, the revised language requires that records for which payments are in question be kept until final disposition or resolution which could be longer than 5 years. The sanction dollar limit of \$5,000 reflected in R9-22-406 was deleted since a maximum limit is no longer included in AHCCCS contracts. This provides the agency with the ability to escalate sanction amounts in the event that a particular compliance problem is severe and/or becomes chronic. Other changes have been made to reflect current policies or to better clarify the intent of the rule. For example, the term "quality assurance" was updated to reflect the current industry term "quality management."

ARTICLE 8: Pursuant to recommendations made during a 5-year rule review, amendments to rule language in the Article are being made to adopt rules that are more understandable, more logical, more consistent, and which conform with current format and style requirements. Essentially the current rules were reformatted and rewritten to meet these goals. For example, the current rules did not consolidate general provisions that govern all grievances and appeals. R9-22-801 now achieves this. The adopted general provision rules (R9-22-801) and the grievance rule (R9-22-804) will be cross-referenced in the ALTCS (Chapter 28) grievance and appeal rules (rulemaking in process) to assure consistency in procedures for all parties involved in resolving grievance and appeal matters.

The only substantive change in the Article 8 rulemaking is in R9-22-803. These new rules are needed since, as of July 1, 1995, AHCCCS took over the responsibility for conducting Supplemental Security Income-related medical assistance eligibility determinations and for handling any appeals resulting from this action. Prior to July, 1995, the Department of Economic Security was responsible for this. (NOTE: Article 8 rules do not include procedures for grievances and appeals arising from DES eligibility determinations since DES rules govern those grievances and appeals.)

ARTICLE 10: The Administration is revising rules to provide clarity regarding 1st- and 3rd-party liability terminology and sources. Language was added to require AHCCCS members and eligible persons to assist in identifying parties who may be liable to pay for AHCCCS-covered services and this change will ensure that AHCCCS continues to act as the payor of last resort for members and eligible persons. Other changes will make the rules more concise, understandable and consistent with current federal and state laws and will clarify the roles and responsibilities of AHCCCS contractors, providers, nonproviders, and noncontracting providers in the 1st- and 3rd-party liability process.

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

Not applicable

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

R9-22-339: AHCCCS members who are infants will benefit by receiving medical coverage from AHCCCS for 1 year after birth regardless of the mother's eligibility status. However this impact is not a direct result of the rule, but rather of HCFA's approval of this extended eligibility period.

ARTICLE 4: There will be no fiscal impact on businesses or political subdivisions since the proposed rule language changes, which result from a 5-year rule review of this Article, are nonsubstantive and are intended to streamline and clarify the existing rules. Duplicative language that appropriately exists elsewhere in rule has been deleted. Language that does not clearly present current policies or procedures was clarified. Citations to documents incorporated in the rule were updated, as needed. There will be a minor impact for the cost of printing the copies of the rule, once adopted and approved.

ARTICLE 8: There will be no substantive fiscal impact on businesses or political subdivisions as changes are being made only to make the rules easier to use and to clarify AHCCCS' role in determining eligibility for SSI-related medical assistance only individuals and providing continued medical coverage to deemed newborns. There will be a minor impact for the cost of printing the copies of the rule revision and a small cost for training AHCCCS staff to be aware of the changes made in R9-22-803 as a result of the transfer of eligibility for SSI-related MAO individuals to AHCCCS. AHCCCS acute care applicants, eligible persons and members and the State may benefit from the changes since the grievance and appeal process will be more clearly defined and it is possible this could result in the initiation of fewer grievances and appeals.

ARTICLE 10: The agency anticipates no impact on business revenues or payroll for employers because changes are non-substantive and provide only further clarification of terminology and the roles and responsibilities of all parties. In addition, the proposed changes do not add any additional potentially liable sources. The streamlined language may strengthen the recoveries by the agency, via its contractor, which totaled over \$5 million during federal fiscal year 94-95. The new language will permit the state to better identify potential 1st- and 3rd-party liability sources and ensure that AHCCCS continues to be the payor of last resort for members and eligible persons. AHCCCS contractors, providers, nonproviders, and noncontracting providers who provide services to AHCCCS members and eligible persons may indirectly benefit since the roles and responsibilities of each of these parties will be more clearly defined.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Debi Wells
Address: AHCCCS, Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop #4200
Phoenix, Arizona 85034
Telephone: (602) 417-4781
Fax: (602) 256-6786

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

PHOENIX:

Date: July 16, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
701 East Jefferson, 3rd Floor
Phoenix, Arizona

TUCSON:

Date: July 17, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
110 South Church Avenue
Hermosillo Building, Suite #1360
Tucson, Arizona

Posted signs will identify conference room.

Nature: Public hearings on proposed rules to receive oral and written comments.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

10. Incorporations by reference and their location in the rules:

R9-22-339: None

ARTICLE 4:

42 CFR 433, Subpart D is incorporated in R9-22-402(A)(11).

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42 CFR 434.6(b) is incorporated in R9-22-402(A)(12).
42 CFR 434, Subpart C is incorporated in R9-22-402(B) and R9-22-403(B)(7).
42 CFR 447.50 through 447.58 are incorporated in R9-22-402(A)(18).
42 CFR 455, Subparts A and B are incorporated in R9-22-405(A)(21) and (20), respectively.

ARTICLE 8: None

ARTICLE 10: None

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

R9-22-339. Newborn Eligibility

**ARTICLE 4. CONTRACTS, ADMINISTRATION, AND
STANDARDS**

R9-22-401. General
R9-22-402. Contracts
R9-22-403. Subcontracts
R9-22-404. Contract Amendments; Mergers; Reorganizations
R9-22-405. Suspension, Denial, Modification, or Termination of Contract
R9-22-406. Contract Compliance Sanction Alternative

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS

R-22-801. General Provisions for All Grievances and Appeals Eligibility appeals and hearing requests for the indigent, medically needy, eligible low-income children and state emergency services persons
R9-22-802. Eligibility Appeals for Applicants, Eligible Persons and Members Receiving State-funded AHCCCS Services Member grievances
R9-22-803. Eligibility Appeals for Applicants, Eligible Persons, and Members Receiving SSI-related Medical Assistance Only AHCCCS Services Non-member grievances
R9-22-804. Grievances Contractor and county grievances

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY

R9-22-1001. First- and Third-party Liability and Coordination of Benefits
R9-22-1002. First- and Third-party Liability Monitoring and Compliance

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

R9-22-339. Newborn Eligibility

- A. Newborns of mothers who have been determined indigent or medically needy shall be provided not less than 30 consecutive days not more than 60 consecutive days of AHCCCS eligibility. Eligibility shall begin on the date of birth. Nothing contained in this subsection shall be construed to prevent a newborn from obtaining additional eligibility and enrollment as otherwise provided for in this Article.
- B. Newborns of categorically eligible mothers shall be AHCCCS eligible from the date of birth through the end of the month in which their 1st birthday occurs, as long as the newborn

remains in the mother's household in the state of Arizona ~~and the mother remains categorically eligible.~~

- C. If AHCCCS receives notification of the baby's birth from the appropriate eligibility agency, contractor or hospital, the newborn shall be enrolled according to R9-22-333, R9-22-334 or ~~R9-22-707~~ R9-22-342 of AHCCCS Rules whichever is applicable.

**ARTICLE 4. CONTRACTS, ADMINISTRATION, AND
STANDARDS**

R9-22-401. General

Contracts to provide services under AHCCCS will be established between the Administration and qualified providers of health care in conformance with the requirements set forth in this Article. Contracts and subcontracts entered into in accordance with this Article shall become public records on file with the Administration. ~~All contracts and subcontracts shall specify agreement to comply with all applicable federal and state statutes and regulations.~~ For the purposes of this Article, select provisions of 42 and 45 CFR (October 1, 1995), as designated in each section within the Article, are incorporated by reference and are on file with the Administration and the Office of the Secretary of State.

R9-22-402. Contracts

- A. Each contract shall be in writing and shall contain at least the following information:
1. Full disclosure of the method and amount of compensation or other consideration to be received by the contractor.
 2. Identification of the name and address of the contractor.
 3. Identification of the population to be covered by the contract.
 4. The amount, duration, and scope of medical services to be provided, or for which compensation will be paid.
 5. Specification of the term of the contract, including the beginning and ending dates, as well as methods of extension, renegotiation and termination.
 6. A provision that the Director or the Secretary of the U.S. Department of Health and Human Services may evaluate, through inspection or other means, the quality, appropriateness, or timeliness of services performed under the contract.
 7. A description of patient, medical, and cost record-keeping systems and a provision that the Director or the Secretary of the U.S. Department of Health and Human Services may audit and inspect any of the contractor's records that pertain to services performed and determinations of amounts payable under the contract. Such records shall be maintained by the contractor for 5 years from the date of final payment or, until any pending

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- ~~audits are completed and approved by the Director, whichever 1st occurs, for records relating to costs and expenses to which the Administration has taken exception, 5 years after the date of final disposition or resolution thereof.~~
8. A provision for the retention of a specified percentage of periodic payments to contractors, a reserve fund, or other provisions by which adjustments in the payments to contractors are made, based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. This specification applies only to capped fee-for-service and AHCCCS assembled network contractors and providers that participate in a risk retention fund in accordance with R9-22-714.
 9. A provision that contractors shall maintain all forms, records, and statistical information required by the Director for purposes of audit and program management. Such material, including files, correspondence, and related information pertaining to services rendered or claims for payments shall be subject to inspection and copying by the Administration and the U.S. Department of Health and Human Services during normal business hours at the place of business of the person or organization maintaining the records. ~~The cost of duplicating materials will be born by AHCCCS.~~
 - ~~10. A provision that records pertaining to categorically eligible persons or members be retained in accordance with the record retention requirements of 45 CFR 74.~~
 10. ~~11. A provision that the contractor safeguard information about categorically eligible persons and members as required by 42 CFR 431, Subpart F.~~
 11. ~~12. Identification of any activities to be performed by the contractor affecting categorically eligible persons and members that are related to 3rd-party liability requirements as prescribed in 42 CFR 433, Subpart D.~~
 12. ~~13. Specification of those functions which may be subcontracted, including a provision that any subcontract affecting categorically eligible individuals meets the requirements of 42 CFR Section 434.6(b).~~
 13. ~~14. A provision that the contractor arrange for the collection of any required co-payment and 3rd-party insurance.~~
 14. ~~15. A provision that the contractor will not bill or attempt to collect from the member for any covered service except as may be authorized by statute or these rules.~~
 15. ~~16. A provision that the contract will not be assigned or transferred without the prior approval of the Director.~~
 16. ~~17. A provision that specifies procedures for enrollment or re-enrollment of the covered population.~~
 17. ~~18. A provision that specifies procedures and criteria for terminating the contract.~~
 18. ~~19. A provision that any cost sharing requirements imposed for services furnished to members are in accordance with 42 CFR 447.50 through 447.58.~~
 19. ~~20. A provision in the contract or proposal on which the contract is based that specifies:~~
 - a. ~~The the actuarial basis for computation of capitation fees, if applicable; and~~
 - b. ~~That the capitation fees and any other payments provided for in the contract do not exceed the payment limits set forth in 42 CFR 447.361.~~
 20. ~~21. Provisions regarding termination of enrollment and choice of health professional, that are consistent with the requirements of 42 CFR 434.27 and 434.29.~~
 21. ~~22. A provision that a contractor shall provide for an internal grievance procedure that:~~
 - a. Is approved in writing by the Administration;
 - b. Provides for prompt resolution; and
 - c. Assures the participation of individuals with authority to require corrective action.
 - ~~22. 23. A provision that requires the contractor to maintain an internal quality assurance management system consistent with AHCCCS rules and 42 CFR 434.34.~~
 23. ~~24. A provision that requires the contractor to submit marketing plans, procedures, and materials to the Administration for approval in accordance with R9-22-505 before implementation.~~
 24. ~~25. A statement in the contract or proposal on which the contract is based that all representations made by contractors or authorized representatives are truthful and complete to the best of their knowledge.~~
 25. ~~26. A provision that the contractor shall be fully responsible for all tax obligations, Worker's Compensation Insurance, and all other applicable insurance coverage, for itself and its employees, and that the Administration shall have no responsibility or liability for any such taxes or insurance coverage.~~
 26. ~~27. A provision that the contractor agrees to comply with all applicable statutes and rules.~~
- B. Each contract shall include all provisions necessary to ensure compliance with the applicable requirements of 42 CFR 434, Subpart C and 45 CFR 74, Appendix G.
- R9-22-403. Subcontracts**
- A. Approval. Any subcontract entered into by a contractor to provide covered services to ~~categorically needy, indigent or medically needy~~ AHCCCS members or any amendment to a subcontract shall be subject to review and approval by the Director. No subcontract alters the legal responsibility of the contractor to the Administration to assure that all activities under the contract are carried out.
 - B. Subcontracts. Each subcontract shall be in writing and include:
 1. A specification that the subcontract shall be governed by, and construed in accordance with all laws, rules, and contractual obligations of the contractor.
 2. An agreement to notify the Administration in the event the agreement with the contractor is amended or terminated.
 3. An agreement that assignment or delegation of the subcontract shall be voidable unless prior written approval is obtained from the Administration.
 4. An agreement to hold harmless the state, the Director, the Administration, and members in the event the contractor cannot or will not pay for covered services performed by the subcontractor.
 5. A provision that the subcontract and subcontract amendments are subject to review and approval by the Director as set forth in these rules and that a subcontract or subcontract amendment may be terminated, rescinded, or canceled by the Director for a violation of the provisions of these rules.
 6. An agreement to hold harmless and indemnify the state, the Director, the Administration, and members against claim, liabilities, judgments, costs, and expenses with respect to 3rd parties, which may accrue against the state, the Director, the Administration, or members, through the negligence of the subcontractor.
 7. A provision that members are not to be held liable for payment to providers in the event of contractor's bankruptcy, in compliance with 42 CFR 434, Subpart C.
 - 8.7. The requirements contained in R9-22-402(A)(1) through (7), (9) through, ~~(11)~~(10), ~~(15)~~(14), ~~(16)~~(15), ~~(18)~~(17).

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and (25)(24) through (27)(26) but substituting the term "subcontractor" wherever the term "contractor" is used.

- C. Waiver. A contractor may submit a written request to the Administration requesting a waiver of the requirement that the contractor subcontract with a hospital in the contractor's service area. The request shall set forth the reasons therefor and shall state all efforts that have been made to secure such a subcontract. For good cause shown, the Administration may waive the hospital subcontract requirement. The Administration shall consider the following criteria in deciding whether to waive the hospital subcontract requirement:
1. The number of hospitals in the service area.
 2. The extent to which the contractor's primary care physicians have staff privileges at noncontracting hospitals in the service area.
 3. The size and population of, and the demographic distribution within, the service area.
 4. Patterns of medical practice and care within the service area.
 5. Whether the contractor has diligently attempted to negotiate a hospital subcontract in the service area.
 6. Whether the contractor has any hospital subcontracts in adjoining service areas with hospitals that are reasonably accessible to the contractor's members in the service area.
 7. Whether the contractor's members can reasonably be expected to receive all covered services in the absence of a hospital subcontract.

R9-22-404. Contract Amendments; Mergers; Reorganizations

Any merger, reorganization, or change in ownership of a contractor shall ~~constitute~~ require a contract amendment which requires the prior approval of the Director. Additionally, any merger, reorganization, or change in ownership of a subcontractor that is related to or affiliated with the contractor shall constitute a contract amendment which requires the prior approval of the Director. To be effective, contract amendments shall be reduced to writing and executed by ~~the contractor and~~ the Director.

R9-22-405. Suspension, Denial, Modification, or Termination of Contract

- A. General. The Director may suspend, deny, refuse, or fail to renew, or terminate a contract or subcontract for good cause which may include the following reasons:
1. Submitting any misleading, false, or fraudulent information when submitting claims for payment.
 2. Submitting false information for the purpose of obtaining greater compensation than that to which the contractor is legally entitled.
 3. Submitting inaccurate or incomplete representations in the bidding process.
 4. Failing to disclose or make available to the Administration, or its authorized representatives, records, or services provided to eligible persons or members and records of payment made thereafter.
 5. Submitting false information for the purpose of obtaining authorization for the provision of services requiring such authorization.
 6. Over-provision of services or the delivery of unnecessary services by inducing or otherwise causing an eligible person or member to receive services or items not required by such person or member or by directly furnishing such services or items.
 7. Provision of any services in violation of or not authorized by or otherwise precluded by licensure, certification or other law.
 8. Breach of the terms or conditions of a contract.

9. A felony conviction of members of the board, administrators, managers, or participating physicians of a contractor.
 10. Giving or accepting a rebate, kickback, or fee; or portion of a fee, or charge for referral of an eligible person or member referral.
 11. Violation of any of the provisions of A.R.S. Title 36, Chapter 29, Title XIX of the Social Security Act, as amended, or any state or federal rule promulgated thereunder.
 12. Demonstration of an inability to perform obligations under a contractor agreement by prior conduct.
 13. Determination of a substantial breach of a previous or existing contract agreement with other state agencies.
 14. Determination that a contractor has previously been found ineligible to participate in federal or state assembled medical programs by the Administration or any other state or federal governmental agency.
 15. Failing to reimburse subcontracting and noncontracting providers utilized by referral for the provision of medically necessary health care services to their members within 60 days of receipt of valid claims, unless a different period is specified by contract, or failing to ensure that future claims will be paid.
 16. Failing to reimburse noncontracting providers and non-providers for the provision of emergency medical services provided to the contractor's members within 60 days of receipt of valid claims, or failing to ensure that future claims will be timely paid.
 17. Failure to provide and maintain quality health care service to eligible persons and members, as determined by standards established by state and federal statute or regulations.
 18. Substantiation that the contractor, either by omission or commission, is endangering or has endangered the health, safety, or well-being of an eligible person or member.
 19. Upon the contractor becoming insolvent, or filing proceedings in bankruptcy or reorganization under the United States Code, or assigning rights or obligations under the contract without the prior written consent of the Administration.
 20. Failure or refusal of the contractor to comply with the reporting or disclosure requirement of 42 CFR 455, Subpart B.
 21. Substantiation of fraud or abuse by a contractor or subcontractor in accordance with 42 CFR ~~455-203~~ 455, Subpart A.
 22. Conviction of a criminal offense related to involvement in any program under Medicare, Medicaid, or Title XX of the Social Security Act of any person who has an ownership or control interest in the contractor or subcontractor, or is an agent or managing employee of the contractor or subcontractor.
 23. Failure to conform to and abide by the applicable laws or rules of the state of Arizona, the United States Federal Government, and the Administration.
- B. Modification and termination of the contract without cause. The contract may be modified or terminated at any time by mutual consent of the Administration and contractor. Additionally, the Administration may terminate or suspend the contract in whole or in part without cause effective 30 days after mailing written notice of termination or suspension by certified mail, return receipt requested, to the contractor.
- C. Notification. The Director will provide written notice of intent to suspend, deny, fail to renew, or terminate a contract or subcontract. Such notice will be provided to affected principals,

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enrolled members and other interested parties, and will include the effective date of, and reason for, such action.

- D. Records. All medical, financial, and other records shall be retained by a terminated contractor in accordance with federal and state laws and rules. Medical records or copies of medical records shall be provided to the Director, or his designee, within 10 working days of the effective date of contract termination.

R9-22-406. Contract Compliance Sanction Alternative

The Director may, in lieu of the sanctioning authority prescribed in Section R9-22-405, impose 1 or more of the following sanctions upon a contractor that violates any provision of these rules or of the appropriate AHCCCS contracts:

1. Suspension of any or all further member enrollment, by choice or assignment, for a period of time to be commensurate with the nature, term, and severity of the violation.
2. Withholding of a percentage of the contractor's capitation prepayment, commensurate with the nature, term, and severity of the violation, ~~but not to exceed \$5,000.00 per violation.~~
3. Written notice will be provided contractors specifying the sanction alternative, grounds for such sanction, and either the length of suspension or the amount of prepayment to be withheld.
4. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions provided for by contract.

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS

R9-22-801. General Provisions For All Grievances and Appeals
~~Eligibility appeals and hearing requests for the indigent, the medically needy, eligible low-income children and state emergency services persons~~

A. Definitions. For the purpose of this Article, the following words and phrases have the following meanings:

1. "Appellant" means the individual filing any grievance or appeal pursuant to this Article.
2. "Request for hearing" means an appeal of an adverse eligibility action; an appeal filed after an informal decision has been rendered on a grievance by the Administration; an appeal of a grievance decision rendered by a contractor; or an appeal filed because a contractor has failed to timely render a grievance decision.
3. "Respondent" means the party responsible for the action being grieved or appealed. In eligibility appeals regarding state-funded services, the county is the respondent. In eligibility appeals regarding SSI-related medical assistance only services, the Administration is the respondent. In most member grievances, the contractor generally is the respondent.

B. Filing grievances and appeals. Unless provided elsewhere in this Chapter, all grievances and appeals or other statements shall be considered filed when received in writing by the Administration.

C. Computation of time. In computing any period of time for establishing timeliness of filing grievances and appeals, the period shall commence the day after the act, event, or decision grieved or appealed, and shall include all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period shall be extended until the end of the next day which is not a weekend or a legal holiday.

D. Appellant's hearing rights.

1. Each appellant shall be afforded those hearing rights as specified in A.R.S. §§ 41-1061 and 41-1062.

2. Each appellant has the right to obtain copies of any relevant documents from the respondent or from AHCCCS at the appellant's expense.

3. Each appellant has the right to appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the Administration a written statement that is signed and notarized prior to the hearing.

4. Each appellant has the right to bring an interpreter to assist at the hearing.

5. Persons who are hearing-challenged according to A.R.S. § 12-242 shall be provided an interpreter by the Administration.

E. Withdrawal or denial of a request for hearing.

1. The AHCCCS Chief Hearing Officer or designee shall deny a request for hearing and deny a grievance or appeal if a written request for withdrawal is received from the appellant prior to the date of the hearing. The case file then shall be closed.

2. The AHCCCS Chief Hearing Officer or designee may deny a request for hearing and dismiss a grievance or appeal upon written determination if:

- a. The request for hearing is untimely;
- b. The request for hearing, grievance or appeal is not for a reason permitted pursuant to this Article;
- c. The appellant's appeal rights have been waived pursuant to Article 3; or
- d. The appeal is otherwise moot.

F. Notice of Hearing. The Notice of Hearing shall be in accordance with A.R.S. § 41-1061 and it shall include the following information:

1. A statement asserting the appellant's financial liability if AHCCCS benefits are continued during an eligibility appeal and a proposed discontinuance or redetermination denial is upheld by the Director; and
2. A statement detailing how an appellant may request a change in the scheduled hearing date.

G. Postponement.

1. The AHCCCS Chief Hearing Officer or designee on his or her own motion may postpone a hearing. When a request for postponement is made, it shall be in writing and received by the Administration, Office of Grievance and Appeals, no later than 5 days prior to the scheduled hearing date. The AHCCCS Chief Hearing Officer or designee may grant a request for postponement on a showing that:

- a. There is substantial cause for the postponement and
- b. The cause is beyond the reasonable control of the party making the request.

2. If a postponement is granted, the hearing shall be rescheduled at the earliest practicable date.

H. Failure to appear for hearing. Should any party or representative fail to appear at the hearing without good cause or a postponement, the AHCCCS Chief Hearing Officer or designee may:

1. Proceed with the hearing;
2. Reschedule the hearing with further notice on his or her motion;
3. Issue a decision based on the evidence of record; or
4. Issue a default disposition.

I. Conduct of hearing. The hearing shall be conducted pursuant to A.R.S. §§ 41-1061 and 41-1062.

1. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

2. The AHCCCS Chief Hearing Officer or designee may:
 - a. Hold pre-hearing conferences to settle, simplify, or

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- identify issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- b. Require parties to state their positions concerning the various issues in the proceeding;
 - c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions and other procedural items;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. Impose appropriate sanctions against any individual failing to obey an order under these procedures, which may include:
 - i. Refusing to allow the individual to assert or oppose designated claims or defenses, or prohibiting that individual from introducing designated matters in evidence;
 - ii. Excluding all testimony of an unresponsive or evasive witness; and/or
 - iii. Expelling the individual from further participation in the hearing;
 - h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
 - i. Administer oaths or affirmations.
- J.** AHCCCS Hearing Officer recommended decision. After the conclusion of the hearing, unless the appellant withdraws or the parties stipulate to a settlement, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.
- K.** Decision of the Director.
- 1. The Director may affirm, modify, or reject the Hearing Officer's recommendation in whole or in part; may remand a matter to any party or the Hearing Officer with specific instructions; or make any other appropriate disposition.
 - 2. The Director shall mail by certified mail a copy of the decision to all parties at their last known residence or place of business.
 - 3. If a discontinuance or denial of AHCCCS eligibility is upheld, the decision also shall state that the appellant may reapply for AHCCCS benefits under the conditions specified in Article 3.
- L.** Petition for rehearing or review.
- 1. A party dissatisfied with the decision may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal whereby the aggrieved party was deprived of a fair hearing or appeal;
 - b. Misconduct of a party or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
 - 2. The petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision, which is the postmark date of the decision. The moving party also shall send a copy of the petition to all other parties. If a timely petition for rehearing or review is filed,
- the Director's decision is not a final administrative decision; rather, the Director shall render a Final Decision which is the final administrative decision.
- 3. The petition for rehearing or review shall be in writing and shall specifically state the grounds upon which it is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
 - 4. The Director may remand the case to any party; reopen the decision; order the taking of additional testimony or evidence before the Hearing Officer; amend findings of fact and conclusions of law; make new findings and conclusions; render an amended decision; or deny the petition and affirm the previous decision.
 - 5. The Director, within the time for filing a petition for rehearing or review, may on his or her own motion order a rehearing or issue an amended decision for any reason for which he or she might have done so upon petition of any party.
- M.** Failure to submit a grievance, appeal, request for hearing, or petition for rehearing or review in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.
- A.** Individuals affected by an adverse eligibility action may appeal and request a hearing concerning any of the following adverse eligibility actions:
- 1. Denial of eligibility; or,
 - 2. Discontinuance of eligibility; or,
 - 3. Delay in the eligibility determination beyond 30 days from the date of application unless the head of household had agreed to an extension in writing.
- B.** Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date.
- C.** Computation of time. In computing any period of time for establishing timeliness of filing grievances and appeals allowed by this Article, the day of the act, event or decision from which the designation of time begins to run shall not be included. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.
- D.** Eligibility appeals and hearing request process:
- 1. The head of household or the designated representative may appeal and request a hearing from any adverse eligibility action by completing and submitting the AHCCCS Request for Hearing form or by submitting a written request as described in Paragraph 4 of this subsection not later than 15 days after the date of the Notice of Action.
 - 2. The Request for Hearing form or the written request shall be submitted to either the county eligibility office which rendered the adverse eligibility action or directly to the AHCCCS Administration, Office of Grievance and Appeals. If the Request for Hearing is submitted by mail, the date of request shall be the postmark date. If the Request for Hearing is submitted in person, the date of request shall be the date on which the request is submitted to the county or the AHCCCS Administration, Office of Grievance and Appeals.
 - 3. Counties shall maintain a register which documents the dates on which Requests for Hearings are submitted.

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Each Request for Hearing form shall indicate the date of request as described in Paragraph 2.

4. If the appellant or designated representative does not utilize the Request for Hearing form, he or she shall provide the following information on a written hearing request:
 - a. The case name, and;
 - b. Adverse eligibility action being appealed, and;
 - c. Reason for appeal.
 5. If requested, the county eligibility office shall assist the appellant or designated representative in the completion of the Request for Hearing form or the written request.
 6. The county eligibility office shall send to the AHCCCS Administration, Office of Grievance and Appeals, the Pre-hearing Summary, a copy of the case file, and the Request for Hearing form or written request, which must be received by the AHCCCS Administration, Office of Grievance and Appeals, not later than 10 days from the date of the county's receipt of the request. In the event that the appeal request is submitted directly to the AHCCCS Administration, Office of Grievance and Appeals, the county shall send the Pre-hearing Summary and a copy of the case file, which shall be received by the AHCCCS Administration, Office of Grievance and Appeals, not later than 10 days from the date of a request for such materials.
 7. The Pre-hearing Summary shall be completed by the county eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
- E. Withdrawal and denial of the hearing request:**
1. The AHCCCS Chief Hearing Officer or designee shall deny a Request for Hearing and deny the appeal if a written request for withdrawal is received from the appellant prior to the date of the hearing. The case file then shall be closed.
 2. The AHCCCS Chief Hearing Officer or designee may deny an appeal and Request for Hearing if:
 - a. The date of request is subsequent to the 15th day after the date of the Notice of Action;
 - b. The appeal and Request for Hearing is for a reason(s) other than those identified in subsection (A) of this Section; or,
 - c. The appellant's appeal rights have been waived pursuant to Article 3.
- F. Postponement:**
1. The Chief Hearing Officer or designee on his own motion may postpone a hearing. When the request for postponement is made, it shall be made in writing and received by the AHCCCS Administration, Office of Grievance and Appeals, no later than 5 days prior to the scheduled hearing date. The AHCCCS Chief Hearing Officer or designee shall grant a request for postponement on a showing that:
 - a. There is substantial cause for the postponement, and
 - b. The cause is beyond the reasonable control of the party.
 2. If a postponement is granted, the hearing shall be rescheduled at the earliest practicable date.
- G. Notice of Hearing.** The Notice of Hearing shall be in accordance with A.R.S. § 41-1061 and shall include the following information:
1. A statement asserting the appellant's financial liability if AHCCCS benefits are continued and a proposed discontinuance is upheld by the Director, and;
 2. A statement detailing how an appellant may request a change in the scheduled hearing date.
- H. Failure to appear for hearing.** Should the appellant, his representative, or a representative from the county fail to appear at the hearing without good cause or a postponement, the AHCCCS Chief Hearing Officer or designee may:
1. Proceed with the hearing;
 2. Reschedule the hearing with further notice on his own motion;
 3. Issue a decision based on the evidence of record; or
 4. Issue a default disposition.
- I. AHCCCS coverage during the appeal process:**
1. ~~Individuals appealing a discontinuance. A discontinuance is a termination of AHCCCS benefits prior to the last month of the individual's certification period. The effective date of a discontinuance shall be the 16th day after the date of Notice of Action. Individuals appealing a discontinuance of AHCCCS benefits within the 15 day time frame as specified in subsection (C) shall continue to be covered by AHCCCS until an adverse decision on appeal is rendered or until the end of the certification period set forth in R9-22-313, whichever comes 1st. Appellants whose benefits are continued shall be financially liable for all AHCCCS benefits received during a period of ineligibility if the discontinuance decision is upheld by the AHCCCS Director.~~
 2. ~~Individuals appealing a denial of AHCCCS coverage:~~
 - a. ~~A denial is an adverse eligibility decision which finds the applicant or member ineligible for AHCCCS benefits as a result of either an initial application or a redetermination which does not terminate benefits prior to the end of a current certification period.~~
 - b. ~~The effective date of a denial of an initial application is the date of Notice of Action. Individuals may appeal this denial within the 15 day time frame as specified in subsection (C). In the event that the denial is overturned, the effective date of AHCCCS coverage shall be established by the Director in accordance with applicable law.~~
 - c. ~~The effective date of a denial of a redetermination shall be the last day of the final month in the current certification period. Individuals may appeal this denial within the 15 day time frame as specified in subsection (C). Individuals appealing an indigent, medically needy, or eligible low income child redetermination decision within the 15 day time frame as specified in subsection (C) shall continue to be covered by AHCCCS until such time as administrative remedies are exhausted. Members whose benefits are continued shall be financially liable for all AHCCCS benefits received during a period of ineligibility if the denial decision is upheld by the Director.~~
- J. Appellant's hearing rights:**
1. Each appellant shall be afforded those hearing rights as specified in A.R.S. §§ 41-1061 and 41-1062.
 2. Each appellant has the right to obtain copies of any relevant documents from the county eligibility case record at the appellant's expense.
 3. Each appellant has the right to appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the Administration a written statement that is signed and notarized prior to the hearing.
 4. Each appellant has the right to bring an interpreter to assist at the hearing.

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5. ~~Persons who are deaf or mute according to A.R.S. § 12-242 shall be provided an interpreter by the Administration.~~
- K.** ~~County review of eligibility determinations. In the event that new information is acquired by the county which materially affects the adverse eligibility decision, the county shall complete a new application and render a decision according to the requirements specified in Article 3. The effective date of AHCCCS coverage shall be the date established in Article 3. A county decision in accordance with this subsection shall not be considered a disposition of a pending appeal.~~
- L.** ~~Conduct of hearing. The hearing shall be conducted pursuant to A.R.S. §§ 41-1061 and 41-1062.~~
- M.** ~~AHCCCS Hearing Officer decision:~~
1. ~~Except as provided in Paragraph 2 of this subsection, after the conclusion of the hearing, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.~~
 2. ~~Under the following circumstances the AHCCCS Chief Hearing Officer or designee may issue a final disposition in a case without a hearing by:~~
 - a. ~~Default when the appellant, his representative, or a representative of the county fails to appear at the hearing without good cause; or,~~
 - b. ~~Disposition order when the appellant withdraws his appeal or there is a stipulated agreement to the disposition; or,~~
 - c. ~~Dismissal order when the appeal was not timely filed.~~
- N.** ~~Decision of the Director:~~
1. ~~After receipt of the Hearing Officer's recommended decision, the Director shall issue his or her decision in writing, which shall include findings of fact and conclusions of law, and unless otherwise provided by law, personally deliver, or mail by certified mail a copy thereof to all parties at their last known residence or place of business. If a discontinuance or denial is upheld, the decision shall also state that the appellant may reapply for AHCCCS benefits under the conditions specified in Article 3.~~
 2. ~~As part of his or her decision, the Director may remand the case to the county for eligibility determination.~~
 3. ~~Except as provided in subsection (N) of this Section, the Director's decision made pursuant to this subsection shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq.~~
- O.** ~~Request for Rehearing or Review:~~
1. ~~A party dissatisfied with the decision may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:~~
 - a. ~~Irregularity in the proceedings of the hearing or appeal whereby the aggrieved party was deprived of a fair hearing or appeal;~~
 - b. ~~Misconduct of a party, the county, or the agency;~~
 - c. ~~Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;~~
 - d. ~~That the decision is the result of passion or prejudice; or~~
 - e. ~~That the decision is not justified by the evidence or is contrary to law.~~
 2. ~~The Director may remand the case to the county for eligibility determination, open the decision, order the taking of additional testimony or evidence before the Hearing Officer, amend findings of fact and conclusions of law, or~~

~~make new findings and conclusions, and render a new decision.~~

3. ~~The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.~~
 4. ~~A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the party dissatisfied with the decision or the postmark date, whichever occurs 1st. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing.~~
- P.** ~~Failure to submit a grievance or appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.~~

R9-22-802. Eligibility Appeals For Applicants, Eligible Persons and Members Receiving State-funded AHCCCS Services
Member grievances

- A.** Adverse eligibility actions. Applicants, eligible persons, and members receiving state-funded AHCCCS services may appeal and request a hearing concerning any of the following adverse eligibility actions:
1. Denial of eligibility,
 2. Discontinuance of eligibility, or
 3. Delay in the eligibility determination beyond 30 days from the date of application unless the head of household had agreed to an extension in writing.
- B.** Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.
- C.** Appeals and requests for hearing.
1. The applicant, eligible person, member, head of household, or designated representative may appeal and request a hearing regarding an adverse eligibility action by completing and submitting the AHCCCS Request for Hearing from or by submitting a written request containing the following information:
 - a. The case name,
 - b. The adverse eligibility action being appealed, and
 - c. The reason for appeal.
 2. The Request for Hearing shall be filed not later than 15 days after the date of the notice of adverse action by mailing or delivering it to either the county eligibility office or the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery.
- D.** County responsibilities.
1. Counties shall maintain a register which documents the dates on which Requests for Hearings are submitted.
 2. If requested, the county eligibility office shall assist the appellant or designated representative in the completion of a Request for Hearing.
 3. The Pre-hearing Summary shall be completed by the county eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
 4. The county eligibility office shall send to the Administration, Office of Grievance and Appeals, the Pre-hearing Summary; a copy of the case file; and the Request for Hearing, which must be received by the Administration.

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Office of Grievance and Appeals, not later than 10 days from the date of the county's receipt of the request. If the request is submitted directly to the Administration, the county shall send the materials to the Office of Grievance and Appeals not later than 10 days from the date of a request for such materials.

5. County review of eligibility determinations. If new information is acquired by the county which materially affects the adverse eligibility decision, the county shall complete a new application and render a decision according to the requirements specified in Article 3. The effective date of AHCCCS coverage shall be the date established in Article 3. A county decision in accordance with this subsection shall not be considered a disposition of a pending appeal.

E. AHCCCS coverage during the appeal process.

1. Eligible persons or members appealing a discontinuance. A discontinuance is a termination of AHCCCS benefits prior to the last month of the individual's certification period. The effective date of a discontinuance shall be the 16th day after the date of the Notice of Action. Eligible persons or members appealing a discontinuance of AHCCCS benefits within the 15-day timeframe as specified in subsection (C) shall continue to be covered by AHCCCS until an adverse decision on appeal is rendered or until the end of the certification period set forth in R9-22-313, whichever comes 1st.

2. Individuals appealing a denial of AHCCCS coverage.

- a. A denial is an adverse eligibility decision which finds the applicant, eligible person, or member ineligible for AHCCCS benefits as a result of either an initial application or a redetermination which does not terminate benefits prior to the end of a current certification period.

- b. The effective date of a denial of an initial application is the date of the Notice of Action. Individuals may appeal this denial within the 15-day timeframe as specified in subsection (C). If the denial is overturned, the effective date of AHCCCS coverage shall be established by the Director in accordance with applicable law.

- c. The effective date of a denial of a redetermination shall be the last day of the final month in the current certification period. Individuals who appeal this denial within the 15-day timeframe as specified in subsection (C) shall continue to be covered by AHCCCS until such time as administrative remedies are exhausted.

3. Individuals whose benefits have been continued shall be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision or redetermination denial is upheld by the AHCCCS Director.

A. A member aggrieved by any adverse decision or action by a contractor, subcontractor, non-contracting provider, non-provider, or the Administration, may file a grievance and request a hearing as specified in this Section.

B. Member grievances to contractor:

1. All grievances filed by members relating to the contractor, subcontractor, non-contracting provider, or non-provider shall be filed with the member's contractor for review, investigation, and resolution in accordance with the grievance requirements of this subsection and the applicable contract.
2. All grievances shall be filed orally or in writing with the member's contractor not later than 35 days after the date

of such adverse decision or action. Grievances filed pursuant to this subsection shall state with particularity the factual and legal basis therefore, and the relief requested.

3. The contractor shall record and retain sufficient information to identify the grievant, date of receipt, and nature of the grievance.

4. A final decision shall be rendered by the contractor on all grievances within 30 days of filing. The decision by the contractor shall be personally delivered or mailed by certified mail to the member, and by regular mail to all other parties and shall state the basis for the decision as well as the individual's right to appeal the decision to the Administration. The contractor's final decision shall specify the manner in which an appeal to the Administration may be filed.

5. At the time of enrollment, each member shall be given written information explaining grievance procedures available through the contractor, and through the Administration.

C. Member's appeal or grievance to the Administration:

1. Members may appeal to and request a hearing from the AHCCCS Administration, Office of Grievance and Appeals, if:

- a. The member filed a written notice of appeal not more than 15 days after the date of the final decision of the contractor. The date of the final decision shall be the date of personal delivery to the member or the postmark date of certified mailing, whichever occurred 1st.

- b. In the event that a decision was not timely rendered by the contractor in accordance with the provision of this Section, the member files a written notice of appeal based upon the contractor's failure or refusal to timely decide the grievance.

- c. The member has a grievance against the Administration and filed the grievance not more than 35 days after the date of adverse decision or action by the Administration. Grievances filed pursuant to this subsection shall state with particularity the factual and legal basis therefor, and relief requested.

2. The Administration, in its sole discretion, may investigate the grievance and render a written decision prior to scheduling a hearing. A hearing shall be scheduled in the event the Administration elects not to investigate the grievance, or upon the request for a hearing by any grievant subsequent to any such investigation by the Administration.

D. AHCCCS Hearing Officer decision:

1. The hearing shall be conducted before an AHCCCS Hearing Officer designated by the Director.

2. After the conclusion of the hearing, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

E. Decision of the Director:

1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his or her decision in writing, which shall include findings of fact and conclusions of law, and unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business.

2. Except as provided in subsection (F) of this Section, the Director's decision made pursuant to this subsection shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq.

F. Request for Rehearing or Review:

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- 1. ~~A party dissatisfied with the decision may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:~~
 - a. ~~Irregularity in the proceedings of the hearing or appeal whereby the aggrieved party was deprived of a fair hearing or appeal;~~
 - b. ~~Misconduct of a party or the agency;~~
 - c. ~~Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;~~
 - d. ~~That the decision is the result of passion or prejudice, or~~
 - e. ~~That the decision is not justified by the evidence or is contrary to law.~~
- 2. ~~The Director may open the decision, order the taking of additional testimony or evidence before the Hearing Officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.~~
- 3. ~~The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.~~
- 4. ~~A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the member or the postmark date. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing.~~
- G. ~~Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking a judicial relief.~~

R9-22-803. Eligibility Appeals for Applicants, Eligible Persons, and Members Receiving SSI-related Medical Assistance Only AHCCCS Services Non-member grievances

- A. Adverse eligibility actions. Applicants, eligible persons, and members receiving SSI-related medical assistance only AHCCCS services may appeal and request a hearing concerning any of the following adverse eligibility actions:
 - 1. Denial of eligibility.
 - 2. Discontinuance of eligibility, or
 - 3. Delay in the eligibility determination beyond the 45- or 90-day timeframe as prescribed in federal law from the date of application unless the applicant or representative had agreed to an extension in writing.
- B. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.
- C. Appeals and requests for hearing.
 - 1. The applicant, eligible person, member, or designated representative may appeal and request a hearing regarding an adverse eligibility action by completing and submitting the AHCCCS Request for Hearing form or by submitting a written request containing the following information:
 - a. The case name.
 - b. The adverse eligibility action being appealed, and
 - c. The reason for appeal.
 - 2. For denials, the Request for Hearing shall be filed not later than 20 days from the date of the notice of adverse

action. For discontinuances, the Request for Hearing shall be filed not later than 10 days after the effective date of action. The Request for Hearing shall be filed by mailing or delivering it to either the AHCCCS eligibility office or the Administration, Office of Grievance and Appeals. For this section only, the date of the Request for Hearing shall be the postmark date, if mailed, or the date of personal delivery.

D. Eligibility office responsibilities.

- 1. The eligibility office shall maintain a register which documents the dates on which Requests for Hearings are submitted.
- 2. If requested, the eligibility office shall assist the appellant or designated representative in the completion of a Request for Hearing.
- 3. The Pre-hearing Summary shall summarize the facts and factual basis for the adverse eligibility action.
- 4. The eligibility office shall send to the Administration, Office of Grievance and Appeals, the Pre-hearing Summary; a copy of the case file; and the Request for Hearing, which must be received by the Administration, Office of Grievance and Appeals, not later than 10 days from the date of the receipt of the request. If the request is submitted directly to the Administration, Office of Grievance and Appeals, the eligibility office shall send the materials to the office of Grievance and Appeals and Appeals not later than 10 days from the date of a request for such materials.

E. AHCCCS coverage during the appeal process.

- 1. Eligible persons or members appealing a discontinuance. A discontinuance is a termination of AHCCCS benefits. For actions requiring 10 days' advance notice, eligible persons or members requesting a hearing before the effective date of the adverse action shall receive continued AHCCCS benefits until an adverse decision on the appeal is rendered.
- 2. Applicants appealing a denial of AHCCCS coverage.
 - a. A denial is an adverse eligibility decision which finds the applicant ineligible for AHCCCS benefits.
 - b. Applicants may appeal this denial within the time frames specified in subsection (C)(2). If the denial is overturned, the effective date of AHCCCS coverage shall be established by the Director in accordance with applicable law.
 - 3. Eligible persons or members whose benefits have been continued shall be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision is upheld by the Director.

- A. ~~A person who applies to be a member or an eligible but non-enrolled individual, and a person who applies for eligibility may request a hearing by filing a written grievance with the AHCCCS Administration, Office of Grievance and Appeals.~~
- B. ~~The written grievance shall be filed with and received by the Administration not later than 35 days after the date of adverse decision or action being grieved. A copy of a grievance that involves issues related to payment or reimbursement for services also shall be personally delivered or mailed by regular mail by the grievant to the provider or nonprovider that rendered such services.~~
- C. ~~The Administration, in its sole discretion, may investigate the grievance and render a written decision prior to scheduling a hearing. A hearing shall be scheduled in the event the Administration elects not to investigate the grievance, or upon the request for a hearing by any grievant subsequent to any such investigation by the Administration.~~

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- D. Grievances that involve issues related to continuity or delivery of medical services shall be resolved as expeditiously as practicable considering the medical needs presented by the grievant.
- E. Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.
- F. This section shall not apply to actions or decisions affecting an individual's eligibility; or to actions or decisions that reduce a categorically eligible individual's benefits as a result of changes in State or Federal law.

R9-22-804. Grievances Contractor and county grievances

A. The provisions of this Section provide the exclusive manner through which any individual or entity may grieve against the Administration and/or its contractors in connection with any adverse action, decision, or policy. This Section shall not apply to actions or decisions affecting an eligible person's or member's eligibility or to actions or decisions that reduce a categorically eligible person's or member's benefits as a result of changes in state or federal law.

B. Direct grievances to the Administration.

1. A grievance may be filed directly with the agency only by individuals not enrolled with a contractor; by contractors; by counties; and by individuals or entities grieving an adverse action, decision, or policy actually made or enacted by the Administration. If the aggrieved adverse action, decision, or policy actually was made by a contractor, the appellant shall 1st file the grievance with the contractor responsible for the decision, policy or action being grieved, so that the contractor may investigate and resolve the grievance in accordance with this article and any applicable contracts.
2. Except as provided in subsection (B)(3) below, all written grievances shall be filed with and received by the Administration not later than 35 days after the date of the adverse action, decision, or policy implementation being grieved.
3. Written grievances regarding claim denials shall be filed not more than 12 months after the date of the service for which payment is claimed. Grievances challenging reinsurance claim denials by the Administration shall be filed not more than 12 months after the close of the contract year in which the claim was incurred. If the claim is denied less than 35 days prior to the expiration of the 12-month time period, the dissatisfied party shall have 35 days from the date of the denial to file the grievance.
4. All grievances shall state with particularity the factual and legal basis thereof and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.
5. The Administration, in its sole discretion, may investigate the grievance and render a written informal decision prior to scheduling a hearing. A hearing shall be scheduled if any party timely requests a hearing within 15 days of the postmark date of the informal decision.
6. If a hearing is requested, it shall be conducted pursuant to the provisions set forth in R9-22-801.

C. Grievances to contractors.

1. Except as provided in subsection (C)(2) below, all grievances shall be filed with and received by the appropriate contractor not later than 35 days after the date of the adverse action or decision. Members may file grievances orally.
2. Written grievances regarding claim denials shall be filed not more than 12 months after the date of the service for which payment is claimed.

3. All grievances shall state with particularity the factual and legal basis and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.

4. A final decision shall be rendered by the contractor on all grievances within 30 days of filing unless the parties agree on a longer period. The decision by the contractor shall be personally delivered or mailed by certified mail to the parties, and it shall state the basis for the decision as well as the grievant's right to appeal the decision to the Administration. The contractor's final decision shall specify the manner in which an appeal to the Administration may be filed.

5. The contractor shall record and retain information to identify the grievant, date of receipt, and nature of the grievance.

6. At the time of enrollment, contractors shall give to members written information regarding grievance procedures available through the contractor and the Administration.

D. Appeal of contractor decisions to the Administration.

1. After 1st grieving to the appropriate contractor, grievants may appeal to and request a hearing from the Administration, Office of Grievance and Appeals if:

a. The grievant files a written notice of appeal not more than 15 days from the date of final decision of the contractor, which is the earlier of the date of personal delivery or the postmark date of certified mail; or

b. If a decision was not timely rendered by the contractor, the grievant files a written notice of appeal based upon the contractor's failure or refusal to timely decide the grievance.

2. The Administration, in its sole discretion, may investigate the grievance and render a written informal decision prior to scheduling a hearing. A hearing shall be scheduled if any party timely requests a hearing within 15 days from the postmark date of the informal decision of the Administration.

3. If a hearing is requested, it shall be conducted pursuant to the provisions set forth in R9-22-801.

A. The provisions of this Section provide the exclusive manner through which contractors, providers, non-contracting providers, their agents and subcontractors, nonproviders, and the counties, may grieve against the Administration and its contractors in connection with any adverse action, decision, or policy.

B. Grievances against contractor.

1. All grievances relating to an adverse decision or action by a contractor shall be filed with the contractor for review, investigation and resolution in accordance with the grievance requirements of this subsection and any applicable contract.

2. All grievances, excluding those challenging claim denials, shall be filed in writing with the contractor not later than 35 days after the date of such adverse decision or action. All grievances challenging claim denials shall be filed in writing with the contractor not later than 12 months from the date of the service for which payment is claimed. The grievance shall state with particularity the factual and legal basis therefor, and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.

3. The contractor shall record and retain information to identify the grievant, date of receipt, and nature of the grievance.

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4. A final decision shall be rendered by the contractor within 30 days of filing, unless the parties agree to a longer period of time. The decision of the contractor shall be personally delivered or mailed by certified mail to the grievant, and by regular mail to all other parties and shall state the basis for the decision, as well as the party's right to appeal the decision to the Administration. The contractor's final decision shall specify the manner in which an appeal to the Administration may be filed.
- G. Grievances to the Administration:
1. Contractors, providers, noncontracting providers, their agents and subcontractors, nonproviders, and the counties may grieve to the AHCCCS Administration, Office of Grievance and Appeals if:
 - a. The provider, noncontracting provider, its agent or subcontractor, nonprovider, or the county files a written notice of appeal with the Administration not more than 15 days after the final decision of the contractor rendered pursuant to subsection (B). The date of the final decision shall be the date of personal delivery or the postmark date of certified mailing, whichever occurred 1st.
 - b. A decision was not timely rendered by the contractor in accordance with subsection (B) and the provider, noncontracting provider, its agent or subcontractor, nonprovider, or the county files a written notice of appeal, based upon the contractor's failure or refusal to timely decide the grievance.
 - c. The contractor, provider, noncontracting provider, its agent or subcontractor, nonprovider or the county has a grievance against the Administration and files the grievance not more than 35 days after the date of adverse action, decision or policy implementation by the Administration. Provided, however, any grievances challenging claim denials by the Administration shall be filed not more than 12 months after the date of the service for which payment is claimed. Grievances challenging reinsurance claim denials by the Administration shall be filed not more than 12 months after the close of the contract year in which the claim was incurred. If the claim is denied less than 35 days prior to the expiration of the 12 month time period, the dissatisfied party shall have 35 days from the date of the denial to file a grievance. Such grievances shall be in writing and state with particularity the factual and legal basis, and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.
 2. The Administration, in its sole discretion, may investigate the grievance and render a written decision prior to scheduling a hearing. A hearing shall be scheduled in the event the Administration elects not to investigate the grievance, or upon the request for a hearing by any grievant subsequent to any such investigation by the Administration.
- D. Appeals. A party may appeal the Administration's grievance decision by filing a request for hearing with the Director. The request for hearing shall be filed not later than 15 days after the date of the Administration's grievance decision. The date of the grievance decision shall be the date of personal delivery to the grievant or the postmark date, whichever occurs 1st:
1. The hearing shall be conducted before an AHCCCS Hearing Officer designated by the Director.
 2. After the conclusion of the hearing, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.
- E. Decision of the Director:
1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his or her decision in writing, which shall include findings of fact and conclusions of law, and, unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business.
 2. Except as provided in subsection (F), the Director's decision made pursuant to this subsection shall be a final administrative decision.
- F. Request for Rehearing or Review:
1. Unless the Director incorporates a finding in his decision that good cause exists otherwise, an aggrieved party may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the grievant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal whereby the aggrieved party was deprived of a fair hearing or appeal;
 - b. Misconduct of a party or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
 2. The Director may open the decision, order the taking of additional testimony or evidence before the Hearing Officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
 3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
 4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the grievant or the postmark date. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing.
- G. Pending final resolution of a grievance, appeal, or request for judicial review, a grieving contractor shall proceed diligently with the performance of the contract and in accordance with the Administration's or Director's decision.
- H. Failure to comply with the provisions of this Section shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.

ARTICLE 10. FIRST AND THIRD-PARTY LIABILITY

R9-22-1001. First and Third-party Liability and Coordination of Benefits

- A. Payor of last resort. AHCCCS shall be used as a source of payment for covered services only after all other sources of payment for members and eligible persons receiving care have been used. AHCCCS shall act only as a payor of last resort unless specifically prohibited by applicable state or federal law.

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B. Cost avoidance Reasonable efforts. ~~The Administration, Contractors, providers, nonproviders, noncontracting providers,~~ eligible ~~non-enrolled persons and members shall take reasonable measures to identify and recover from legally liable 1st or 3rd party persons and resources before the Administration is billed unless prohibited by state or federal law. Providers include prepaid capitated contractors. For the purposes of this Article, 1st-party liability means the resources available from any insurance obtained directly or indirectly by the member which provides benefits directly to the member and is liable to pay all or part of the medical expenses incurred by an AHCCCS applicant or member.~~

C. Member and eligible person participation. Members and eligible persons shall cooperate to identify potentially liable 1st and 3rd parties and to assist the Administration or its authorized representative, contractors, providers, nonproviders, or noncontracting providers in pursuing a 1st or 3rd party who may be liable to pay for AHCCCS-covered services.

~~E.D.~~ Collections. Contractors, providers, nonproviders, and noncontracting providers are responsible for identifying and pursuing collection of reimbursement from all probable sources of 1st or 3rd party liability, except for underinsured and uninsured motorists insurance insurers, 3rd party liability insurance insurers and tort-feasors unless referred by the Administration or its authorized representative. Contractors, providers, nonproviders, and noncontracting providers are responsible for identifying and notifying the Administration in accordance with R9-22-1002(D) of the potential liability of underinsured and uninsured motorist insurance insurers, 1st or 3rd party liability insurance, insurers and tort-feasors. The Administration shall coordinate and pursue collection from underinsured and uninsured motorist insurance insurers, 1st or 3rd party liability insurance insurers and tort-feasors in cases of probable 3rd party liability. Contractors, providers, nonproviders and noncontracting providers shall cooperate with the Administration or its authorized representative in its collection efforts.

~~E.E.~~ Duplication of benefits. Payments made for covered services by AHCCCS shall not duplicate benefits otherwise available from probable 1st or 3rd party payors. Payments by AHCCCS for covered services may supplement payment or benefits from 1st or 3rd parties to the extent authorized by these rules this Chapter or applicable contracts.

~~E.F.~~ Recovery Recoveries; prepaid capitated contractors. A contractor may retain up to 100% of its 1st and 3rd party collections provided that:

1. Total payments received do not exceed the total amount of the contractor's financial liability for the member;
2. AHCCCS fee-for-service, deferred liability, and reinsurance benefits have not duplicated the recovery;
3. Such recovery is not prohibited by federal or state law; and
4. The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to reimburse the Administration up to 100% of 3rd party payments collected which are not reflected in reduced capitation rates.

~~F.G.~~ Recovery Recoveries; Administration. The Administration may retain its 1st and 3rd party collections up to 100% of fee-for-service, deferred liability, and reinsurance payments. The funds collected shall be deposited in the AHCCCS fund.

R9-22-1002. First and Third-party Liability Monitoring and Compliance

A. Categories of 3rd party liability. First or 3rd-party liability sources. The Administration shall monitor 1st or 3rd-party payments to a contractor, provider, or nonprovider or noncon-

tracting provider, which may include but are not limited to payments by or for:

1. ~~Workmen's compensation;~~
2. ~~Disability insurance;~~
3. ~~A hospital and medical service corporation;~~
4. ~~A health care services organization or other health or medical or insurance plan;~~
5. ~~Standard health insurance;~~
6. ~~Medicare and other governmental payors;~~
7. ~~Medical payments insurance for accidents; and~~
8. ~~Underinsured and uninsured motorist insurance, 3rd party liability insurance or tort-feasors:~~
 1. Private health insurance;
 2. Employment-related health insurance;
 3. Long-term care insurance;
 4. Other federal programs not excluded by statute;
 5. State worker's compensation;
 6. Automobile insurance, including uninsured and underinsured motorists insurance;
 7. Court judgments or settlements from liability insurers, including settlement proceeds placed in trusts;
 8. Court ordered or non court ordered medical support from absent parents;
 9. First party probate-estate recoveries;
 10. Adoption related payments; and
 11. Tort-feasors.

B. Contractor responsibility. The contractor shall be responsible for recovering 1st or 3rd party payments from the sources set forth in subsection (A)(1) through 7 (4).

C. Monitoring. The Administration shall determine whether a contractor, provider, or nonprovider or noncontracting provider is in compliance with the requirements set forth in this Article by inspecting source documents for: claim submissions and payment documentation for cost avoidance and recovery activities.

1. ~~Verifiability and reliability;~~
2. ~~Appropriateness of recovery attempt;~~
3. ~~Timeliness of billing;~~
4. ~~Accounting for reimbursements;~~
5. ~~Auditing of receipts; and~~
6. ~~Other monitoring deemed necessary by the Administration.~~

D. Notification for perfection, recording and assignment of AHCCCS liens.

1. County requirements. The county of residence shall notify the Administration pursuant to subsection (E) not later than 5 days after it files a lien pursuant to A.R.S. § 11-291 for charges for hospital or medical services provided to an injured person who is determined AHCCCS eligible, so that the Administration may preserve its lien rights pursuant to A.R.S. § 36-2915.

2. Hospital requirements. Hospitals providing emergency or urgent medical services to a ~~an eligible non-enrolled person or member or eligible person~~ for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration pursuant to subsection (E) not later than 15 days after discharge. A hospital also may satisfy the requirement of this subsection by mailing to the Administration a copy of the lien it proposes to record or has recorded pursuant to A.R.S. § 33-932 not later than 15 days after discharge.

3. ~~Contractor, Provider provider, and nonprovider and noncontracting provider requirements.~~ Contractors, Provider providers, and nonproviders and noncontracting providers, other than hospitals, rendering medical services to a

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member or an eligible non-enrolled person or member for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration pursuant to subsection (E) not later than 5 days after providing such services.

- E. Notice requirements. Notification information for liens. Notification requirements shall be satisfied when all of the following information is mailed to the Administration: 1. Name of contractor, provider, or nonprovider or noncontracting provider; 2. Address of contractor, provider, or nonprovider or noncontracting provider; 3. Name of patient, member or eligible person; 4. Patient's Member's or eligible person's Social Security number or AHCCCS identification number; 5. Address of patient member or eligible person; 6. Date of patient's member's or eligible person's admission; 7. Amount estimated to be due for care of patient, member or eligible person; 8. Date of patient's member or eligible person's discharge; 9. Name of county in which injuries were sustained; and 10. Name and addresses of all persons, firms, or corporations and their insurance carriers claimed by the patient member or eligible person or the patient's legal representative to be liable for damages.

F. Notification of health insurance information. Contractors, providers, nonproviders, and noncontracting providers shall provide notification of health insurance information to the Administration. Notification requirements shall be satisfied when all of the following health insurance information is submitted to the Administration within 10 days of receipt of the health insurance information:

- 1. Name of member or eligible person;
2. Member's or eligible person's Social Security number or AHCCCS identification number;
3. Insurance carrier name;
4. Insurance carrier address;
5. Policy number;
6. Policy begin and end dates; and
7. Insured's name and Social Security number.

F.G. Sanctions Forfeitures. Providers Contractors, providers, or nonproviders or noncontracting providers who fail to meet the notice notification requirements set forth in this Section shall forfeit their right to reimbursement, including fee-for-service, deferred liability, and reinsurance, from the Administration for services provided to eligible non-enrolled persons or members, or from the contractor for services provided to members, unless the contractor, provider, or nonprovider, or noncontracting provider demonstrates good cause for such failure. Good cause means a cause that was not within the contractor's, provider's, or nonprovider's or noncontracting provider's control.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG TERM CARE SYSTEM

PREAMBLE

- 1. Sections Affected: R9-28-408; Rulemaking Action: New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific): Authorizing statute: A.R.S. § 36-2932(P); Implementing statutes: A.R.S. §§ 36-2933(A) and (C), 36-2934(D) and (G), 36-2932(O), and 36-2933(D).
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking: Name: Debi Wells; Address: AHCCCS, Office of Policy Analysis and Administration, 801 East Jefferson, Mail Drop #4200, Phoenix, Arizona 85034; Telephone: (602) 417-4534; Fax: (602) 256-6757
4. An explanation of the rule, including the agency's reasons for initiating the rule: 1993 Federal legislation (OBRA 93) specified how any trusts created on or after August 1993 from the assets of an individual or spouse, and income from those trusts, should be treated if the individual applies for the ALTCS program. Federal statute identifies 3 types of trusts: revocable, irrevocable, and special treatment trusts. In the latter category the trust can be a pooled trust, an income only trust, or a trust for a disabled individual under 65. The federal statute specifies, for special treatment trusts, how the trust corpus should be treated and to some extent how transfer of resources to the trust should be treated when determining financial eligibility for ALTCS. States have flexibility in interpreting how income from the trusts and how payments from the trusts, should be treated. This rule implements federal law and clarifies AHCCCS policy concerning treatment of trusts.

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5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact:
The rule is anticipated to have a positive but intangible economic impact on small businesses (e.g., nursing facilities, ICF-MRs, and home- and community-based service providers) and on consumers by clarifying AHCCCS standards for treatment of trusts in the eligibility determination process for the ALTCS program. Certain trusts may facilitate ALTCS eligibility for consumers who are applicants, eligible persons and members. ALTCS eligibility in turn would allow access by consumers to long-term care services rendered by small businesses which are ALTCS providers.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Debi Wells
Address: AHCCCS, Office of Policy Analysis and Administration
801 East Jefferson, Mail Drop #4200
Phoenix, Arizona 85034
Telephone: (602) 417-4534
Fax: (602) 256-6757
8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
PHOENIX:
Date: July 16, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
701 East Jefferson, 3rd Floor
Phoenix, Arizona
TUCSON:
Date: July 17, 1996
Time: 1:30 p.m.
Location: AHCCCS Administration
110 South Church Avenue
Hermosillo Building, Suite #1360
Tucson, Arizona
Posted signs will identify conference room.
Nature: Public hearings on proposed rules to receive oral and written comments.
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
Section 1917(d) of the Social Security Act, August 10, 1993, is incorporated at R9-28-408(A) and (B).
11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

Section
R9-28-408. Trusts

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-408. Trusts

A. Treatment Of Income For Revocable And Irrevocable Trusts. Pursuant to the provisions contained in §1917(d)(3)(A) and (d)(3)(B) of the Social Security Act, August 10, 1993, incor-

porated by reference and on file with the Office of the Secretary of State, the Administration shall include income placed into such trusts for both income eligibility calculations pursuant to A.R.S. § 36-2934(C) and post-eligibility treatment of income pursuant to A.R.S. § 36-2932(O). The full amount of any payments to the individual or for the individual's benefit from such a trust, or the full amount of the monthly income deposited into the trust, whichever is greater, shall be included for both the income eligibility and post-eligibility calculations, regardless of the purpose for which the payment is made.
B. Trusts Created Pursuant to § 1917(d)(4).

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1. For the purposes of this subsection, §1917(d)(4) of the Social Security Act, August 11, 1993, is incorporated by reference and are on file with the Office of the Secretary of State.
 2. Trusts created pursuant to §1917(d)(4)(B).
 - a. The income assigned or deposited into the trust shall be included in the post-eligibility treatment of income pursuant to A.R.S. § 36-2932(O). Deductions shall be given in accordance with R9-28-404 to determine the individual's contribution toward the cost of his or her care. The individual's contribution shall not exceed the monthly capitation paid by the Administration for the individual's care.
 - b. Any amounts distributed from the trust to the individual or for the individual's benefit for purposes other than post-eligibility expenses (Share of Cost) and allowed deductions from the Share of Cost) in accordance with R9-28-404 shall be included in the income eligibility calculation, regardless of the purpose for which the payment is made.
 - c. The income of the individual, including all amounts assigned to the trust, shall not exceed the average cost of nursing home care to a private-pay patient.
 - d. The Administration shall require that the trust meet the following criteria:
 - i. The trust shall specify that upon revocation of the trust, termination of the trust, or the individual's death, the Administration shall receive all amounts remaining in the trust equal to the total medical and long term care expenses, including capitation, fee-for-service, and reinsurance expenses, paid by the Administration on the individual's behalf.
 - ii. The income shall be assigned when legally possible to the trust account.
 - iii. The income shall be directly deposited into the trust account. Until this is accomplished, the trustee shall provide verification that the funds were administered pursuant to the terms of the trust.
 3. Trusts created pursuant to § 1917(d)(4)(A) and (C).
 - a. The Administration shall include income placed into such trusts for both income eligibility calculations pursuant to A.R.S. § 36-2934(C) and post eligibility treatment of income pursuant to A.R.S. § 36-2932(O). The full amount of any payments to the individual or for the individual's benefit from such a trust, or the full amount of the monthly income deposited into the trust, whichever is greater, shall be included for both the income eligibility and post-eligibility calculations, regardless of the purpose for which the payment is made.
 - b. The Administration shall require that the trust meet the following criteria:
 - i. A trust created pursuant to § 1917(d)(4)(A) shall specify that upon revocation of the trust, termination of the trust or the individual's death, the Administration shall receive all amounts remaining in the trust equal to the total medical and long term care expenses, including capitation, fee-for-service, and reinsurance expenses, paid by the Administration on the individual's behalf.
 - ii. A trust created pursuant to § 1917(d)(4)(C) shall specify that upon revocation of the trust, termination of the trust, or the individual's death, the Administration shall receive all amounts remaining in the individual's account equal to the total medical and long term care expenses, including capitation, fee-for-service, and reinsurance expenses, paid by the Administration on the individual's behalf.
 4. For all trusts created pursuant to § 1917(d)(4).
 - a. The trustee shall initially notify the Administration in writing of planned distributions. Changes in those distributions or any new distributions shall be reported in writing no less than 45 days prior to making such distributions from the trust. The trustee shall further furnish the Administration with records and information about any trust distributions upon request.
 - b. If the trustee fails to comply with this rule, violates any provision of the trust, or takes any action that may have adverse consequences regarding the state's interest in the trust, the Administration shall conduct a redetermination of the individual's eligibility. As a result of the trustee's actions, the Administration may determine that the trust is not a trust created pursuant to § 1917(d)(4) for a period of time determined by the Administration, in which case the trust shall be deemed a trust pursuant to subsection (A), above. The Administration shall give written notice of its decision, and this decision may be grieved pursuant to Article 8.
- C. Trusts Created Other than by Will Before August 11, 1993.**
1. For purposes of this subsection, a "Medicaid qualifying trust" is a trust, or similar legal device, created (other than by will) before August 11, 1993, by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and distribution of such payments is determined by 1 or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.
 2. This subsection shall apply without regard to:
 - a. Whether or not the Medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medical assistance under the Arizona State Plan;
 - b. Whether or not the discretion described in subsection (C)(1) is actually exercised.
 3. In the case of a Medicaid qualifying trust, the amounts from the trust deemed available to a grantor, for purposes of determining eligibility, is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term "grantor" means the individual referred to in subsection (C)(1).
 4. These provisions may be waived if the Administration determines that their application would cause an undue hardship.

NOTICE OF PROPOSED RULEMAKING

TITLE 16. TAX APPEALS

CHAPTER 4. BOARD OF EQUALIZATION

PREAMBLE

1. Sections Affected

R16-4-101
R16-4-102
R16-4-103
R16-4-104
R16-4-105
R16-4-106
R16-4-107
R16-4-108
R16-4-109
R16-4-110
R16-4-111
R16-4-112
R16-4-113
Exhibit A
Exhibit B

Rulemaking Action

New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 42-172.01(H)

Implementing statutes: A.R.S. §§ 442-172.01 et seq.

3. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Phillip G. Viator, Clerk of the Board
Address: State Board of Equalization
1501 West Washington Street, Suite 221
Phoenix, Arizona 85007
Telephone: (602) 542-7033
Fax: (602) 542-7073

4. An explanation of the rule, including the agency's reasons for initiating the rule:

R16-4-101: The rule defines the terms to be used throughout the rest of the Article. Definitions are provided to clarify references in the text of the rules.

R16-4-102:

- A. Written information presented to the Board on petition forms is vital to the decision-making process, especially when a petitioner requests an appeal "On the Record". The rule requires petitioners to provide the Board with legible information.
- B. There are 2 different types of property; locally assessed property valued by county assessors and centrally assessed property valued by the Department of Revenue. Locally assessed properties are appealed on a different form than centrally assessed. The rule clarifies which forms and documents are required to appeal locally assessed property, who prescribes the required appeal forms, and who must sign the form.
- C. The Section identifies the form required to file an appeal on centrally assessed property.
- D. The Section identifies the form required for filing an appeal when an Assessor or the Department of Revenue is the petitioner.
- E. The Section specifies what constitutes the date of filing with the Board. Its purpose is to standardize the requirements for filing an appeal.

R16-4-103

- A. Evidence is not required to be submitted at the time of filing. This Section requires complex and voluminous evidence to be submitted at a specified time prior to the hearing date. This Section facilitates review of the evidence submitted.

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- B. This Section requires the acceptance of copies as evidence. The Section creates uniformity in the acceptance of evidence and recognizes that original documents may not be readily available or available prior to the scheduled hearing.
- C. The Section provides the Board with wide latitude in accepting, weighing, and interpreting the evidence presented.
- D. The Section provides for the submission of exhibits for centrally valued property.

R16-4-104

The Section requires a party who brings a subsequent pleading or motion to the original appeal, to notice all other parties of the pleading or motion.

R16-4-105

Governmental agencies can appeal a lower-level decision to the Board. The rule requires the agency to prove delivery of notice of the appeal to the taxpayer or his/her attorney prior to hearing date.

R16-4-106

The Section limits the power to issue subpoenas. It provides only the Chairperson of the Board with subpoena power.

R16-4-107

Some taxpayers may desire to appeal, but may not wish to appear before the Board and offer oral testimony. The rule allows appeals to be reviewed and decided without oral presentation of evidence. Only physical and written evidence is presented by both sides.

R16-4-108

A.R.S. § 41-1061(F) requires the Board to have proceedings transcribed or a copy of a recording provided upon request. The rule allows any party to transcribe or record the proceedings at their own expense without a formal request to the Board.

R16-4-109

Standardized hearing procedures are provided by this Section. The petitioner is afforded the 1st opportunity to testify which clarifies the issues early in the proceedings. The Section also apprises the taxpayer of what to expect at hearings since this may be the 1st experience for him or her to attend proceedings of this type.

R16-4-110

A.R.S. § 41-1062(A)(4) grants the Board the power to administer oaths. The rule requires all testimony in proceedings to be under oath or affirmation.

R16-4-111

To arrive at a decision, it is sometimes necessary for the Board to request additional information of the parties. When the issuance of a subpoena is deemed unnecessary because there is a willingness by the parties to supply the information and the information is readily available, the rule empowers the Board to request the information.

R16-4-112

- A. The Section permits the petitioner to request a withdrawal any time prior to the close of the hearing, if no objection is made.
- B. The Section gives the Board discretion in allowing a withdrawal request even upon objection.

R16-4-113

The Section provides that decisions will include the Board's docket number, the assessor identification number, the valuation, and classification as found by the Board and provides a member with a dissenting vote to explain their decision if the member so desires.

The State Board of Equalization is a reviewing body empowered by statute to hear property tax appeals and decide questions of valuation and classification. While the statutes provide the basic outline of the appeals procedure, more specific guidelines are necessary to effectively implement these provisions. The proposed rules primarily enhance and support existing statutory provisions and provide additional guidance to taxpayers and government agencies who file with and appear before the Board. The proposed rules are structured to direct taxpayers through a complex system of procedures.

- 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
- 6. The preliminary summary of the economic, small business, and consumer impact:
There will be no significant economic impact on small business beyond what presently exists. The cost of time to fill out a petition and appear before the Board is the only required cost to participate in the appeals process. The following alternatives have been considered for small business.
 - 1. Establish less stringent compliance or reporting requirements in the rule for small business.
 - 2. Establish less stringent schedules or deadlines in the rule for compliance of reporting requirements for small businesses.
 - 3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
 - 4. Establish performance standards for small businesses to replace design or operational standards in the rule.

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5. Exempt small businesses from any or all requirements of the rule.

In drafting the proposed rules, the time and knowledge limitations of the individual tax payer were taken into consideration. Proving different requirements for small business versus other consumers (taxpayers) was considered but rejected; in fairness, all consumers (taxpayers) should be treated the same.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Phillip G. Viator, Clerk of the Board
Address: State Board of Equalization
1501 West Washington Street, Suite 221
Phoenix, Arizona 85007
Telephone: (602) 542-7033
Fax: (602) 542-7073

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**

No oral proceeding is scheduled, however oral comments will be accepted Monday through Friday between 8 a.m. and 5 p.m. at the location listed above.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**

None.

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

TITLE 16. TAX APPEALS

CHAPTER 4. BOARD OF EQUALIZATION

ARTICLE I. GENERAL PROVISIONS

Section

<u>R16-4-101.</u>	<u>Definitions</u>
<u>R16-4-102.</u>	<u>Appeal Forms and Filing Procedures</u>
<u>R16-4-103.</u>	<u>Rules of Evidence</u>
<u>R16-4-104.</u>	<u>Motions and Pleadings</u>
<u>R16-4-105.</u>	<u>Proof of Service by the Assessor or the Department</u>
<u>R16-4-106.</u>	<u>Subpoenas</u>
<u>R16-4-107.</u>	<u>On-the-record Hearings</u>
<u>R16-4-108.</u>	<u>Transcripts and Records of Proceedings</u>
<u>R16-4-109.</u>	<u>Order of Hearing Procedure</u>
<u>R16-4-110.</u>	<u>Testimony Under Oath</u>
<u>R16-4-111.</u>	<u>Request for Additional Information</u>
<u>R16-4-112.</u>	<u>Withdrawals</u>
<u>R16-4-113.</u>	<u>Decisions of the Board</u>

ARTICLE I. GENERAL PROVISIONS

R16-4-101. Definitions

In this Article, unless the context otherwise requires:

- "Appeal" means petition.
- "Appealed property" means the property which is the subject of the appeal.
- "Assessor" means the county assessor of the county where the property is located.
- "Board" means the Board of Equalization, or any Board member, hearing officer, or panel thereof authorized to act on behalf of the Board pursuant to A.R.S. §§ 42-172.01 or 42-172.02.
- "Chair" means the Chair of the Board of Equalization.
- "Department" means the Department of Revenue.
- "Hearing officer" means a person appointed by the Chair to hear an appeal.

- "On-the-record" means a hearing where evidence is reviewed by the Board without oral testimony.
- Petitioner means the person or entity who qualifies to file the appeal and appear before the Board.
- "SBOE" means State Board of Equalization.

R16-4-102. Appeal Forms and Filing Procedures

- All appeals and other pleadings filed with the Board shall be typewritten or legibly written.
- All appeals filed with the Board shall comply with statutory requirements.
- All appeals filed pursuant to A.R.S. § 42-221 shall be filed by filing a copy of the form prescribed in the Section and was filed with the assessor together with a copy of the assessor's decision.
- All appeals filed pursuant to A.R.S. § 42-606 shall be filed by filing a copy of the form prescribed in A.R.S. § 42-604 that was filed with the assessor.
- All appeals filed pursuant to A.R.S. § 42-179.03 shall be filed on the form prescribed in that Section.
- In all appeals of property which is valued by the Department the petitioner shall submit the Board's appeal form TA-200/84 attached as Exhibit A. (TA-200/84 forms may be obtained from the Board of Equalization).
- An appeal is deemed filed either:
 - On the date the appeal is received by the Board, or
 - As of the date the appeal is postmarked by the United States Postal Service, whichever is earlier.

R16-4-103. Rules of Evidence

- To present evidence of the income approach to value for property valued by the Assessor, the petitioner shall complete and file the appropriate Income and Expense Statement on the form DOR 82300 (Revised July 1995) attached as Exhibit B. The statement shall be filed with the SBOE and the County

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Assessor no later than 5 working days prior to the hearing. (DOR 82300 forms may be obtained from the Department or your local Assessor's office).

- B. Reproductions shall be admitted in evidence or substituted in place of the original documents upon a proper showing of evidence.
- C. The rules of evidence shall not be strictly enforced and any evidence that is relevant may be allowed.
- D. To present exhibits at hearing of property valued by the Department, all parties shall 1st submit those exhibits to the SBOE and to the opposing party or their counsel no later than 3 working days prior to the hearing.

R16-4-104. Motions and Pleadings

- A. All motions and pleadings shall be served on all other parties with a proof of service.
- B. The Chair shall determine if a motion should be heard prior to a hearing, the Chair shall designate a Board member or hearing officer or assign a panel to hear such a motion. The panel hearing the motion need not be the same panel hearing the appeal.

R16-4-105. Proof of Service by the Assessor or the Department

When the Department or the Assessor is the petitioner, Proof of Service of the appeal on the respondent or his/her attorney shall be filed with the Board prior to the hearing.

R16-4-106. Subpoenas

- A. Upon request by any party to a proceeding before the Board, or by request of the Board, the Chair of the Board may issue subpoenas for the attendance of the witnesses, for the production of books, records, documents, and other evidence as may be required. Except where the subpoena is issued at the Board's request, a subpoena shall be served on behalf of and at the expense of the person requesting it.
- B. Such subpoenas shall command the designated witness to appear and testify or to produce records at a specified time and place.
- C. Subpoenas shall be served by the requesting party no later than 5 working days prior to the time specified for the production of records or witnesses.

R16-4-107. On-the-record Hearing

The parties may stipulate an appeal be heard on-the-record.

R16-4-108. Transcripts and Records of Proceedings

Any party may employ, at his/her own expense, a court reporter or may utilize a recording device to record the proceedings.

R16-4-109. Order of Hearing Procedure

The order of hearing procedure before the Board shall be as follows:

1. Opening statements, if requested by the Board;
2. Presentation of testimony and evidence by the petitioner;
3. Presentation of testimony and evidence by the petitioner;
4. Presentation of testimony and evidence by other parties to the proceeding;
5. Final arguments, if requested by the Board.

R16-4-110. Testimony Under Oath

All testimony in proceedings before the Board shall be given under oath or by affirmation.

R16-4-111. Request for Additional Information

The Board, or a hearing officer, may request any party to a proceeding to furnish information in their possession or control as the Board or hearing officer deems necessary.

R16-4-112. Withdrawal

The Board shall allow the withdrawal of an appeal at any time prior to the conclusion of the hearing if there is no objection by a party or by the Board to the request for withdrawal. If there is an objection, the Board may in its discretion allow the withdrawal.

R16-4-113. Decision of the Board

All decisions of the Board shall include:

1. The Board's docket number,
2. The Assessor's parcel identification number or roll number;
3. The Board's decisions with respect to property valuation and classification, and
4. Other matters properly before the Board.

EXHIBIT A

Arizona Administrative Register
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PETITION FOR REVIEW OF PROPERTY VALUED BY THE ARIZONA DEPARTMENT OF REVENUE

Petitions must be filed on or before the fourth Monday in June or within fifteen (15) days of the date the Department mails the valuation of the property to the Petitioner, whichever date is later. A petition is deemed filed either (1) when actually received by the Board or (2) as of the date of the United States Postal Service postmark. All exhibits to be entered into the record at the time of the hearing must be exchanged between the parties and four (4) copies provided to the Board three (3) work days prior to the hearing.

Statutory time constraints require that hearings be scheduled on short notice. Therefore Petitioner should call the Board as soon as they decide to appeal so that a hearing date may be scheduled to best accommodate witness and travel requirements. Appeals by Private Car Companies are governed by A.R.S. § 42-745.01.

1) <u>PROPERTY TAX NUMBER</u> DATE _____ NAME (AS LISTED ON TAX ROLL) _____ PLEASE PRINT OR TYPE ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____	2) USE OF THE PROPERTY (mine, railroad, pipeline, etc.) _____ _____ _____
()	TELEPHONE: PRIMARY
()	TELEPHONE: ALTERNATE

3) DATE OF DECISION BY THE DEPARTMENT OF REVENUE _____

	Full Cash Value	Limited Property Value	Personal Property Value	Legislative Class	Assessment Ratio
Petitioners Value	\$ _____	\$ _____	\$ _____	_____	_____
Department of Revenues Value	\$ _____	\$ _____	\$ _____	_____	_____

5) Basis for this Petition: _____

FILING AUTHORITY AND GENERAL INFORMATION:

- ARS § 42-145: Annual June property valuation notification pursuant to ARS § 42-145 (B) or (C).
- ARS § 42-149: Property revalued after the third Monday in June on the basis of an error, omission or defect in form.
- ARS § 42-745.01: Private car companies. Petition must be RECEIVED by the State Board by December 1. Hearings will be held Monday through Wednesday prior to December 10. Exhibits Must be exchanged between parties and copies provided to the Board before noon on the Friday preceding the hearing.

6) I HEREBY AFFIRM UNDER OATH THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT.

SIGNATURE OF OWNER OR AUTHORIZED ATTORNEY _____	PRINT NAME IF DIFFERENT FROM ITEM 1 ABOVE _____
ADDRESS IF DIFFERENT FROM ITEM 1 ABOVE _____	TELEPHONE _____
CITY _____	P CODE _____

Send Top Three Copies To

STATE BOARD OF EQUALIZATION
 1501 W. Washington Suite #221
 Phoenix, Arizona 85007

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TA 200/84

STATE BOARD

EXHIBIT B

Arizona Administrative Register
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INCOME AND EXPENSE STATEMENT

Pursuant to A.R.S. § 42-108, 42-221, 42-236 & 42-241.01

CONFIDENTIAL

- The information submitted herein is confidential may be utilized only by the valuation authorities involved in the administrative appeals process and by the Department of Revenue for statistical purposes.
- Complete the income and expense information where applicable. Please type or print.

See reverse side for complete instructions.

DATE _____ COUNTY _____ BOOK _____ MAP _____ PARCEL _____

IF THIS IS A MULTIPLE PARCEL APPEAL CHECK HERE AND ATTACH A LIST OF OTHER PARCELS.

CHECK PROPERTY TYPE

- | | | |
|---|---|---|
| <input type="checkbox"/> APARTMENT | <input checked="" type="checkbox"/> OFFICE/SHOPPING CENTER/RETAIL | <input type="checkbox"/> MINI-STORAGE WAREHOUSE |
| <input type="checkbox"/> INDUST PARK/MFG/DIST WAREHOUSE | <input type="checkbox"/> MOBILE HOME/RV PARK | <input type="checkbox"/> HOTEL/MOTEL/RESORT |
| <input type="checkbox"/> OTHER (MULTI-PURPOSE FORM) | | |

OWNER'S NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TELEPHONE () _____

PROPERTY ADDRESS _____

PRIOR YEAR PROPERTY TAXES \$ _____

PROVIDE THE FOLLOWING DATA IF THE PROPERTY HAS BEEN PURCHASED OR CONSTRUCTED WITHIN THE LAST 3 YEARS.

<u>MARKET DATA</u>		<u>DATE</u>	<u>COST DATA</u>		<u>DATE</u>
PURCHASE AMOUNT	\$ _____	_____	LAND COST	\$ _____	_____
LESS PERSONAL PROPERTY	_____	_____	BLDG COST	_____	_____
REAL PROPERTY AMOUNT	\$ _____	_____	TOTAL COST	\$ _____	_____

MORTGAGE TERMS:

AMOUNT \$ _____ INTEREST RATE _____ LENGTH OF MORTGAGE _____ YEARS

Explain any unusual circumstances or conditions regarding the acquisition of the property in the following space.

AFFIDAVIT (Pursuant to A.R.S. § 42-221)

I, _____, hereby affirm under penalty of perjury that I have reviewed the information contained in this document and any supplemental documents attached and that it is true and correct to the best of my knowledge. The source documents used to compile the information are located at _____.

The documents may be inspected by the County Assessor or the Arizona Department of Revenue in order to verify data submitted herein.

SIGNATURE OF OWNER OR REPRESENTATIVE

SUBSCRIBED AND SWORN BEFORE ME

THIS _____ DAY OF _____ 199 _____

MY COMMISSION EXPIRES

ON _____ DAY OF _____ 199 _____

NOTARY PUBLIC

INSTRUCTIONS
INCOME AND EXPENSE STATEMENT

TO THE PROPERTY OWNER:

- This form must be completed and submitted with the petition for review filed with the County Assessor.
- The evidence permitted in an appeal relating to a petition based upon the income approach to value shall be limited to the income and expense data filed with the petition, the testimony of the petitioner and any witnesses presented on his behalf, and evidence presented by the Assessor and the Department.
- A copy of a properly completed Income and Expense statement filed with the Assessor must be submitted to the State Board of Equalization. It must be received by the State Board of Equalization at least FIVE (5) working days prior to the State Board Hearing.

COMPLETING THE FORM

- Complete the market and/or cost information sections below if the property has been purchased or constructed within the past three (3) years. The Assessor will consider this information, together with other information for similar properties, in arriving at the valuation of your property.
- Complete the applicable Income and Expense information for the type of property indicated.
 1. Information submitted on this form (DOR 82300) must be actual income and expense for the property under appeal.
 2. A petition filed with the Assessor and based upon the income approach to value shall include income and expense data relating to the property for the most recent three consecutive years of the taxpayer ending on or before September 30 of the previous year.
 3. In the event the income and expense data required to be filed are not available to the owner, the owner shall file with the petition such income and expense data as are available.
 4. Other data to justify the owner's opinion of value including a profit and loss statement, a property pro-forma or any other evidence may be submitted on a separate sheet(s) as supplemental data.
 5. The County Assessor may also request additional information to verify the data submitted with the appeal.
- Ensure that the following, often omitted, information is provided on the Income and Expense statement:
 1. Purchase or construction price;
 2. Date of purchase or construction;
 3. Mortgage terms: amount, interest rate, and length of mortgage in years.
- If you are represented by an Agent, include a current Agency Authorization form (DOR 82130AA).
- Retain a copy of this form and any supplemental data submitted.
- Contact the County Assessor if you have any questions on the use of this form.

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OFFICE BUILDING/SHOPPING CENTER/RETAIL STORE

LEASABLE AREA: GROSS SQUARE FEET = _____ NET SQUARE FEET = _____
 TYPE OF LEASE: NET _____ GROSS _____ MODIFIED GROSS _____

NOTE: PROVIDE ADDITIONAL LEASE INFORMATION ON THE ATTACHED TENANT LIST.

<u>POTENTIAL CHARGES TO TENANTS:</u>	<u>TENANT PAYS</u>	<u>OWNER PAYS</u>
COMMON AREA MAINTENANCE	_____	_____
TAXES	_____	_____
INSURANCE	_____	_____
MANAGEMENT	_____	_____
UTILITIES	_____	_____

IF THERE ARE ANY ESCALATION CHARGES, SPECIFY ACCORDINGLY ON TENANT LIST PAGE.

IS SUBJECT PROPERTY OWNER OCCUPIED YES NO PARTIAL

IF PARTIAL OWNER OCCUPIED, ENTER THE SQUARE FOOTAGE OF THE AREA OCCUPIED BY THE OWNER ON THE TENANT LIST. _____

ADDITIONAL INFORMATION/REMARKS

INCOME DATA SUMMARY: Provide latest three (3) year history.

	Last Year	2 Years Ago	3 Years Ago
	199__	199__	199__
POTENTIAL GROSS INCOME (100% OCCUPANCY)	= \$ _____	\$ _____	\$ _____
VACANCY AND COLLECTION LOSS (ACTUAL)	= _____	_____	_____
ADJUSTED GROSS INCOME	= _____	_____	_____
CHARGES TO TENANTS	+ _____	_____	_____
OVERAGE RENTS	+ _____	_____	_____
OTHER INCOME (SERVICE, MISC., ETC.)	+ _____	_____	_____
EFFECTIVE GROSS INCOME	= _____	_____	_____
TOTAL OF ALL EXPENSES	= _____	_____	_____
NET OPERATING INCOME	= \$ _____	\$ _____	\$ _____

NOTE: You may submit any additional documents to support the income and expense information

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EXPENSE DATA
PROVIDE 3-YEAR HISTORY

	<u>Last Year</u> 199__	<u>2 Years Ago</u> 199__	<u>3 Years Ago</u> 199__
<u>FIXED EXPENSES</u>			
PROPERTY TAXES	\$ _____	_____	_____
ANNUAL INSURANCE	_____	_____	_____
TOTAL =	_____	_____	_____
<u>VARIABLE EXPENSES</u>			
MANAGEMENT/AGENT FEES	_____	_____	_____
LEASING AGENT FEES	_____	_____	_____
ADVERTISING/PROMOTION	_____	_____	_____
ADMINISTRATIVE	_____	_____	_____
TOTAL =	_____	_____	_____
<u>UTILITIES</u>			
GAS/ELECTRIC	_____	_____	_____
WATER/SEWER	_____	_____	_____
TELEPHONE	_____	_____	_____
TOTAL =	_____	_____	_____
<u>NORMAL REPAIRS & MAINTENANCE</u>			
BLDG MAINTENANCE & REPAIRS	_____	_____	_____
PARKING LOT & COMMON AREA	_____	_____	_____
TOTAL =	_____	_____	_____
SERVICE CONTRACTS	_____	_____	_____
JANITORIAL	_____	_____	_____
SUPPLIES	_____	_____	_____
TOTAL =	_____	_____	_____
<u>OTHER EXPENSES</u>			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
TOTAL =	_____	_____	_____

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected Rulemaking Action
R18-2-101 Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 49-104
Implementing statutes: A.R.S. §§ 49-404 and 49-425

3. The name and address of agency personnel with whom persons may communicate regarding the rule:
Name: Mark Lewandowski, Rule Development Specialist

or

Martha Seaman, Rule Development Section Manager
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2230
Fax: (602) 207-2251

4. An explanation of the rule, including the agency's reasons for initiating the rule:
The Department of Environmental Quality (ADEQ) is proposing to amend its definition of volatile organic compounds (VOC) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards for ozone under Title I of the Clean Air Act (Act). The proposed rule would add 4 compounds to the list of compounds excluded from the definition of VOC on the basis that these compounds have negligible photochemical reactivity. This proposed rule follows recent identical federal rulemakings. The 4 compounds proposed for delisting in Arizona rules, along with the date and citation of the federal rulemaking, are as follows:
 1. Volatile methyl siloxanes (VMS); 59 FR 50693 (October 5, 1994)
 2. Paraclorobenzotrifluoroide (PCBTF); 59 FR 50693, (October 5, 1994)
 3. Acetone; 60 FR 31633 (June 16, 1995)
 4. Perchloreothylene; 61 FR 4588, (February 7, 1996)In addition, technical corrections are proposed to the names of 3 compounds, shown in the proposed rule at R18-2-116(e), (h), and (i). These corrections were made in the federal rulemaking for VMS and PCBTF.

This Section will result in more accurate assessment of ozone formation potential and will assist Arizona in avoiding exceedances of the ozone health standard. The Section does this by allowing control efforts to focus on compounds which are actual ozone precursors, instead of inducing sources to control compounds which have negligible photochemical reactivity.

Ground-level ozone, the main harmful ingredient in smog, is produced by the combination of VOC and nitrogen oxides. Ground-level ozone causes health problems because it damages lung tissue, reduces lung function, and sensitizes the lungs to other irritants. Animal studies have demonstrated that repeated exposure to ozone for many months can produce permanent structural damage in the lungs and accelerate the rate of lung function loss, as well as the lung aging period. Each year, ground-level ozone is also responsible for several billion dollars worth of agricultural crop yield loss nationally. Studies also indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems.

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

6. The preliminary summary of the economic, small business, and consumer impact:
ADEQ believes that it may not be required to prepare an economic, small business, and consumer impact statement (EIS) for this Section because the Section may qualify as "deregulatory" under A.R.S. § 41-1055(D)(3). ADEQ seeks comment on whether this Section would increase or decrease any monitoring, recordkeeping, or reporting burdens on agencies, political subdivisions, businesses, or persons. Based on information that it will gather between this publication and adoption, ADEQ may decide not to pre-

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pare and publish a final EIS. To aid comment, ADEQ provides the following information relative to the potential costs and benefits of this rule in this portion of the preamble.

The proposed rule would add 3 components and 1 class of compounds to the list of those exempted from consideration as volatile organic compounds (VOC) because of their negligible contribution to the formation of ground-level ozone. EPA delisted these substances in federal regulations after consideration of the latest scientific evidence on the compounds' photochemical reactivity.

Since deregulation of these substances as VOC may tend to encourage their use in various commercial and industrial processes, EPA also considered any potential harm such increased use may present to human health and the environment. For example, for VMS and PCBTF, EPA weighed the known toxic effects of the chemicals against the benefits of deregulation and concluded that the effects did not warrant alteration of a decision to remove them from the VOC list. For acetone, EPA found in a related rulemaking in the same Federal Register that "acetone cannot reasonably be anticipated to cause significantly adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases" and, therefore, deleted acetone from the list of toxic chemicals under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). (61 FR 31645).

With respect to VMS and PCBTF, EPA considered that exempting them from regulation as ozone precursors could contribute to the achievement of several important environmental goals. For example, the compounds could be used as substitutes for several compounds (for example, methyl chloroform) that are listed as hazardous air pollutants (HAPs) under Section 112 of the Act, as well as substitutes for ozone depleting substances which are active in depleting the stratospheric ozone layer. EPA listed several volatile siloxanes as acceptable ozone-depleting substance substitutes for metal cleaning, electronics cleaning, and precision cleaning.

Similarly, acetone can be used as a substitute for several compounds that are listed as HAPs under Section 112 of the Act. Methylene chloride and methyl chloroform are HAPs that are used for metal cleaning and for flexible polyurethane foam blowing. Other HAPs, such as toluene, are often used as solvents in paints and coatings. Acetone can substitute for these substances in some circumstances.

Acetone can also be used as a substitute for ozone-depleting substances which are active in depleting the stratospheric ozone layer. Allowing wider use of acetone will facilitate the transition away from ozone-depleting substances without adversely affecting efforts to control ground level ozone concentrations. For example, chlorofluorocarbon-11 (CFC-11) and methyl chloroform have been used as foam-blowing agents in the manufacture of polyurethane foam. These compounds are also used in metal cleaning in the aircraft manufacturing industry. Both CFC-11 and methyl chloroform are listed as Class I substances under Title VI of the Act, i.e., as substances that have the highest stratospheric ozone-depleting potential. Acetone may be able to be used as a foam-blowing agent and cleaning agent in place of these chemicals.

Perchloroethylene is classified as a hazardous air pollutant under Section 112 of the Act and is a solvent commonly used in dry cleaning, maskant operations, and degreasing operations. This Section merely proposes to delist it as a VOC, with resulting benefits from more accurate assessment of ozone formation potential and in avoiding exceedances for the ozone health standard. It will continue to be regulated as a hazardous air pollutant under Section 112 of the Act. Before delisting it as a VOC, EPA had already issued regulations limiting emissions of perchlorethylene from dry cleaning and halogenated solvent cleaning and as a feedstock in the organic chemical manufacturing industry.

Based on this information, ADEQ would conclude, if the rule required an EIS, that the benefits of the Section outweigh the costs. For more information, the EPA rulemakings cited under question #4 of this preamble should be consulted.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Miia Hill
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-4435
Fax: (602) 207-2251

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

An oral proceeding has been scheduled as follows:

Date: July 16, 1996
Time: 10 a.m.
Location: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

The close of record for written comments is July 19, 1996, at 5 p.m.

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9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporations by reference and their location in the rules:
Not applicable.
11. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section
R18-2-101. Definitions

ARTICLE 1. GENERAL

R18-2-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, 49-521, and 49-541, the terms of this Chapter, unless otherwise specified, shall have the following meanings:

- | | |
|----------------|----------------|
| 1. No change. | 43. No change. |
| 2. No change. | 44. No change. |
| 3. No change. | 45. No change. |
| 4. No change. | 46. No change. |
| 5. No change. | 47. No change. |
| 6. No change. | 48. No change. |
| 7. No change. | 49. No change. |
| 8. No change. | 50. No change. |
| 9. No change. | 51. No change. |
| 10. No change. | 52. No change. |
| 11. No change. | 53. No change. |
| 12. No change. | 54. No change. |
| 13. No change. | 55. No change. |
| 14. No change. | 56. No change. |
| 15. No change. | 57. No change. |
| 16. No change. | 58. No change. |
| 17. No change. | 59. No change. |
| 18. No change. | 60. No change. |
| 19. No change. | 61. No change. |
| 20. No change. | 62. No change. |
| 21. No change. | 63. No change. |
| 22. No change. | 64. No change. |
| 23. No change. | 65. No change. |
| 24. No change. | 66. No change. |
| 25. No change. | 67. No change. |
| 26. No change. | 68. No change. |
| 27. No change. | 69. No change. |
| 28. No change. | 70. No change. |
| 29. No change. | 71. No change. |
| 30. No change. | 72. No change. |
| 31. No change. | 73. No change. |
| 32. No change. | 74. No change. |
| 33. No change. | 75. No change. |
| 34. No change. | 76. No change. |
| 35. No change. | 77. No change. |
| 36. No change. | 78. No change. |
| 37. No change. | 79. No change. |
| 38. No change. | 80. No change. |
| 39. No change. | 81. No change. |
| 40. No change. | 82. No change. |
| 41. No change. | 83. No change. |
| 42. No change. | 84. No change. |
| | 85. No change. |
| | 86. No change. |
| | 87. No change. |
| | 88. No change. |
| | 89. No change. |
| | 90. No change. |
| | 91. No change. |
| | 92. No change. |
| | 93. No change. |
| | 94. No change. |
| | 95. No change. |

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- 96. No change.
- 97. No change.
- 98. No change.
- 99. No change.
- 100. No change.
- 111. No change.
- 112. No change.
- 113. No change.
- 114. No change.
- 115. No change.
- 116. "Volatile organic compounds (VOC)" means any compound, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
 - a. Methane.
 - b. Ethane.
 - c. Methylene chloride (dichloromethane).
 - d. 1,1,1-trichloroethane (methyl chloroform).
 - e. ~~1,1,1-trichloro-2,2,2-trifluoroethane~~ 1,1,2-trichlorotrifluoroethane (CFC-113).
 - f. Trichlorofluoromethane (CFC-11).
 - g. Dichlorodifluoromethane (CFC-12).
 - h. Chlorodifluoromethane (~~CFC-22~~) (HCFC-22).
 - i. Trifluoromethane (~~FC-23~~) (HFC-23).
 - j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114).
 - k. Chloropentafluoroethane (CFC-115).
 - l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123).
 - m. 1,1,1,2-tetrafluoroethane (HFC-134a).
 - n. 1,1-dichloro 1-fluoroethane (HCFC-141b).
 - o. 1-chloro 1,1-difluoroethane (HCFC-142b).
 - p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
 - q. Pentafluoroethane (HFC-125).
 - r. 1,1,2,2-tetrafluoroethane (HFC-134).
 - s. 1,1,1-trifluoroethane (HFC-143a).
 - t. 1,1-difluoroethane (HFC-152a).
 - u. Parachlorobenzotrifluoride (PCBTF).
 - v. Cyclic, branched, or linear completely methylated siloxanes.
 - w. Acetone.
 - x. Perchloroethylene (tetrachloroethylene).
 - y. Perfluorocarbon compounds which fall into these classes:
 - i. Cyclic, branched, or linear, completely fluorinated alkanes.
 - ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.
 - iii. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations.
 - iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- 117. No change.

NOTICE OF PROPOSED RULEMAKING

TITLE 19: ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

PREAMBLE

1. **Sections Affected:** **Rulemaking Action**
R19-3-322 New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 5-504(B).
Implementing statute: A.R.S. § 5-504(B).
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Sandy Williams, Executive Director
Address: Arizona State Lottery Commission
4740 East University
Phoenix, Arizona 85034
Telephone: (602) 921-4400
4. **An explanation of the rules, including the agency's reasons for initiating the rules:**
R19-3-322 sets forth provisions unique to the conduct of the Arizona Lottery's instant games. The provisions of this rule are necessary to implement the requirements of A.R.S. § 5-504 (B) which have not been specified generically in R19-3-301. The unique provisions described in this rule are the nature and location of play symbols, the ticket number, the validation codes, the prize denominations, and the method of selecting a winning ticket.
5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The summary of the economic, small business, and consumer impact:**
This game will provide our players with a larger variety of instant games with a potential increase in sales. The only impact this rule has upon Lottery retailers is to specify how they determine if a ticket is a winning ticket, and, if so, the prize amount.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
 Name: Sandy Williams, Executive Director
 Address: Arizona State Lottery Commission
 4740 East University Drive
 Phoenix, Arizona 85034
 Telephone: (602) 921-4400
8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:
 Date: July 19, 1996
 Time: 10 a.m.
 Location: Arizona State Lottery Commission
 4740 East University Drive
 Phoenix, Arizona
 Nature: Oral Proceeding
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
 Close of the record is 5 p.m., Thursday, July 18, 1996, for written comments, and at the close of the oral proceeding for verbal comments.
10. Incorporations by reference and their location in the rules:
 None.
11. The full text of the rules follows:

TITLE 19: ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3: ARIZONA STATE LOTTERY COMMISSION

ARTICLE 3. INSTANT LOTTERY GAMES

Section
R19-3-312. "COYOTES CASH"

ARTICLE 3. INSTANT LOTTERY GAMES

R19-3-322: "COYOTES CASH"

- A. In the latex play are located on the right side of the ticket, 3 play symbols appear in a vertical row with "YOUR SCORE" printed above, and are 1 of the following: "1", "2", "3", "4", "5", "6", "7", "8", "9", or "10" with confirming captions. Three play symbols appear in a vertical row with "THEIR SCORE" printed above, and are 1 of the following: "0", "1", "2", "3", "4", "5", "6", "7", "8", or "9" with confirming captions.
- B. The play symbol captions correspond with and verify the play symbols as follows:
- | <u>Play Symbol</u> | <u>Caption</u> |
|--------------------|----------------|
| 0 | <u>ZRO</u> |
| 1 | <u>ONE</u> |
| 2 | <u>TWO</u> |
| 3 | <u>THR</u> |
| 4 | <u>FOR</u> |
| 5 | <u>FIV</u> |
| 6 | <u>SIX</u> |
| 7 | <u>SVN</u> |
| 8 | <u>EGT</u> |
| 9 | <u>NIN</u> |
| 10 | <u>TEN</u> |
- C. Three prize symbols appear in a vertical row with "PRIZE" printed above and are 1 of the following: "\$1", "\$2", "\$5", or "\$500" with confirming captions.
- D. Prize symbols and captions for "PRIZE" correspond with and verify each of the prize symbols as follows:

<u>Play Symbol</u>	<u>Caption</u>
<u>\$1</u>	<u>ONEDOL</u>
<u>\$2</u>	<u>TWODOL</u>
<u>\$5</u>	<u>FIVEDOL</u>
<u>\$500</u>	<u>FIVHUND</u>

- E. One prize symbol appears directly under the play area with "BONUS BOX" printed above and are 1 of the following: "T-SHIRT" or "TRY AGAIN". The prize symbols and captions for "BONUS BOX" correspond with and verify each of the prize symbols as follows:
- | <u>Prize Symbol</u> | <u>Caption</u> |
|---------------------|------------------|
| <u>T-SHIRT</u> | <u>T-SHIRT</u> |
| <u>TRY AGAIN</u> | <u>TRY AGAIN</u> |
- F. A pack-ticket number beginning with 000001 is located in the lower-left portion on the back of the ticket.
- G. The retailer validation code verifies instant winners of "\$1", "\$2", "\$3", "\$5", "\$8", "\$9", "\$10", "\$15", and "\$500". The retailer validation code which corresponds with and verifies each of these winners is as follows:
- | | | | |
|------------|--------------|------------|----------------|
| <u>ONE</u> | <u>= \$1</u> | <u>EGT</u> | <u>= \$8</u> |
| <u>TWO</u> | <u>= \$2</u> | <u>NIN</u> | <u>= \$9</u> |
| <u>THR</u> | <u>= \$3</u> | <u>TEN</u> | <u>= \$10</u> |
| <u>FIV</u> | <u>= \$5</u> | <u>FTN</u> | <u>= \$15</u> |
| | | <u>FHN</u> | <u>= \$500</u> |
- H. A prize winner in the "COYOTES CASH" instant game is determined by removing the latex from the play area on the front of the ticket to determine the 2 play symbols and prize symbol identified as "Game 1", the 2 play symbols and prize symbol identified as "Game 2", and the 2 play symbols and prize symbol identified as "Game 3". Neither the retailer validation code (or any portion thereof), the pack-ticket number (or any portion thereof), nor the validation number (or any portion thereof) are play symbols and are not usable or playable as such. If the player's "YOUR SCORE" beats "THEIR SCORE" in either "GAME 1", "GAME 2", or "GAME 3", the

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player wins the prize shown in the corresponding "PRIZE" box. There may be 3 winning games on a ticket. The prizes are as follows:

<u>\$1</u>	=	<u>\$1 (one dollar) or</u>
<u>\$1 + \$1</u>	=	<u>\$2 (two dollars) or</u>
<u>\$2</u>	=	<u>\$2 (two dollars) or</u>
<u>\$1 + \$1 + \$1</u>	=	<u>\$3 (three dollars) or</u>
<u>\$1 + \$2</u>	=	<u>\$3 (three dollars) or</u>
<u>\$5</u>	=	<u>\$5 (five dollars) or</u>
<u>\$1 + \$2 + \$2</u>	=	<u>\$5 (five dollars) or</u>
<u>\$1 + \$2 + \$5</u>	=	<u>\$8 (eight dollars) or</u>
<u>\$2 + \$2 + \$5</u>	=	<u>\$9 (nine dollars) or</u>

<u>\$5 + \$5</u>	=	<u>\$10 (ten dollars) or</u>
<u>\$5 + \$5 + \$5</u>	=	<u>\$15 (fifteen dollars) or</u>
<u>\$500</u>	=	<u>\$500 (five hundred dollars) or</u>
<u>\$500 + \$500</u>	=	<u>\$1,000 (one-thousand dollars)</u>
		<u>or</u>
<u>\$500 + \$500 + \$500</u>	=	<u>\$1,500 (one-thousand five hundred dollars)</u>

BONUS BOX PRIZES:

<u>T-SHIRT</u>	=	<u>NHL t-shirt</u>
<u>TRY AGAIN</u>	=	<u>non-winning ticket</u>