

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. 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* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

#### PREAMBLE

1. Sections Affected:

Article 1  
R2-19-101  
R2-19-102  
R2-19-103  
R2-19-104  
R2-19-105  
R2-19-106  
R2-19-107  
R2-19-108  
R2-19-109  
R2-19-110  
R2-19-111  
R2-19-112  
R2-19-113  
R2-19-114  
R2-19-115  
R2-19-116  
R2-19-117  
R2-19-118  
R2-19-119  
R2-19-120  
R2-19-121  
R2-19-122

Rulemaking Action:

New Article  
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 statutes: A.R.S. §§ 41-1092.01(C)(4) and § 41-1092.02(B)

Implementing statutes: A.R.S. §§ 41-1092 - 41-1092.11; A.R.S. § 12-904, and 12-909

3. The effective date of these rules:

February 3, 1999

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 2 A.A.R. 1162, June 13, 1997.

Notice of Rulemaking Docket Opening: 4 A.A.R. 2628, September 18, 1998.

Notice of Proposed Rulemaking: 4 A.A.R. 2596, September 18, 1998.

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

Name: Cliff J. Vanell

Address: 1700 West Washington, Suite 602  
Phoenix, Arizona 85007

Telephone: (602) 542-9826

Fax: (602) 542-9827

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**6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The rules will provide a single source of procedural requirements governing hearing practice before the Office of Administrative Hearings. Currently parties must seek guidance from the rules of each regulatory agency.

**7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

Not applicable

**8. 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

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

The proposed rules codify existing practice before the Office of Administrative Hearings (OAH) which has been based on existing rules governing administrative hearings before the creation of the OAH. The proposed rules will therefore have a positive impact by allowing parties to access a single source of procedural requirements. Represented parties will save money currently billed to research disparate rules. Unrepresented parties will save time in telephoning or writing for guidance and will be more able to effectively represent themselves before the office.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

R2-19-107 was amended to strike subsection B.

R2-19-108(E) was amended to make explicit that the methods for filing documents with the Office and to serve parties are the same.

R2-19-108(F) was amended to make explicit when copies of documents are considered served.

R2-19-111(4) was amended to add language to clarify the discretion of the administrative law judge to vacate hearing.

R2-19-112(A) was amended to strike superfluous language.

R2-19-113(A) was amended to strike subparagraph 2 requiring a statement of relevance for testimony or evidence. New paragraph B was added conforming the rule to current practice whereby the Administrative Law Judge has discretion to require a statement of relevance for proposed testimony or documents.

R2-19-117(A) was amended to substitute "return" for the word "remand" as a more precise term.

R2-19-122(A) was amended to substitute clearer language indicating what appeals are covered by the rule.

**11. A summary of the principle comments and the agency response to them:**

Comments from the Department of Environmental Quality dated October 29, 1998, were received on November 3, 1998 after the close of the comment period. They were responded to by the OAH by memo on December 2, 1998. No reference to these comments will be made in the Notice of Final Rulemaking, except to the extent that a modification was made as the result of a comment.

Comments from the Arizona State Bar dated December 18, 1998, were received on December 22, 1998, after the close of the comment period. They were responded to by the OAH by memo on January 11, 1999. No reference to these comments will be made in the Notice of Final Rulemaking, except to the extent that a modification was made as the result of a comment. In addition, comments were made by the Arizona Department of Environmental Quality and the Administrative Law Judge Section of the Arizona State Bar at the February 2, 1999, meeting of the Governor's Regulatory Review Council. No reference to these comments will be made in the Notice of Final Rulemaking, except to the extent that a modification was made as the result of a comment.

Comments to R2-19-101. Definitions:

Department of Water Resources, noted that the term "party" is not defined in the rules and that the specific use of the term "agency" within the rules may imply that the agency would not have the same rights as a party. OAH responds that the term "party" is defined in 41-1001(13) and that that definition includes the agency where appropriate. OAH further responds that the specific use of the term "agency" in the rules is meant to distinguish particular duties and responsibilities that are not dependent on the status of "party". For example, the Registrar of Contractors, as "agency," is required to transmit a request for hearing under R2-19-103 even where it takes a passive role in a dispute between 2 private parties and is not itself a party.

Comments to R2-19-107. Computing Time

The comments of the Arizona State Bar suggested the relocation of the 5 day mailing rule to R2-19-108(F) and an elaboration of when a document is considered served under each listed type of service. OAH agrees with the recommendation of the State Bar.

Comments to R2-19-108. Filing Documents

The comments of the Arizona State Bar suggested that R2-19-108(E) be amended to make explicit that the methods for filing documents with the Office and to serve parties are the same. The OAH agrees with the comment of the State Bar.

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The comments of the Arizona State Bar suggested that R2-19-108(F) be amended to make explicit when copies of documents are considered served under the various methods of service. The OAH agrees with the comment of the State Bar.

Comments to R2-19-111. Vacating a Hearing:

The Registrar of Contractors recommended that subparagraph 4 be changed to state: "The agency withdraws its request for hearing services." The OAH responds that Subparagraph 4 is designed to allow the administrative law judge to vacate a hearing on a case by case basis. The current language enshrining the standard of appropriateness is consistent with the mission of the OAH to provide fair, impartial and independent hearings, including ruling on motions involving the substantive rights of non-agency parties. The standard of "appropriateness" is conditioned on future statutory refinements, case law, and due process. By contrast, adopting the recommended language of the Registrar would enshrine in the OAH rules an absolute right of an agency to vacate a hearing, a right not present in statute and which on occasion could present a violation of due process.

The comments of the Arizona State Bar suggested that R2-19-111(4) was vague. The OAH has amended the subsection to add language to clarifying the discretion of the administrative law judge to vacate hearing.

Comments to R2-19-112. Prehearing Conference:

The comments of the Arizona State Bar suggested that the language in various rules be amended to parallel the language of R2-19-112 stating that an action might be through motion, or upon the administrative law judge's own review. However, the OAH believes that the language of R2-19-112 is superfluous and has excised it.

Comments to R2-19-113. Subpoenas

The Department of Gaming noted that subparagraph 2 created a new requirement for a brief statement of relevancy for testimony that is not current practice. It was also noted that the rules of civil practice likewise do not require such a statement. The OAH agrees that the proposed rule would change existing practice. However, current practice does admit the discretion of an Administrative Law Judge to require a statement of the relevancy of proposed testimony or documents. The Administrative Law Judge can thereby screen subpoenas that are designed for the sole purpose of harassment without requiring the subpoenaed party to move to quash. OAH therefore agrees that subparagraph 2 should be stricken requiring a statement of relevance for testimony or evidence. However a new paragraph making the discretionary requirement explicit should be added. These 2 changes would conform the proposed rule to existing practice.

Comments to R2-19-117. Failure of Party to Appear for Hearing

The Administrative Law Section (Section) of the Arizona State Bar and the Arizona Department of Environmental Quality (ADEQ) addressed the Governor's Regulatory Review Council on February 2, 1999. The Section and ADEQ recommended the substitution of the word, "return", for the word "remand," on the grounds that "remand" is a term of art suggesting an official act not normally within the power of the administrative law judge. The OAH agrees that "return" is a more precise term and is consistent with R2-19-111.

Comments to R2-19-121. Hearing Record

The Registrar of Contractors was concerned that the paragraph B of the rule required the agency to bear the cost of copying the record by OAH when the record was transferred to the agency prior to a final decision. This would be an unauthorized fee under 41-1008(A)(1). OAH responds that Paragraph B allows an agency to request that the record be made available for duplication by the agency. There is no requirement that the OAH make a copy of the record, only that a copy is requested and that a party pay the reasonable costs of duplication. Duplication costs are allowable under A.R.S. § 39-121.01(D).

Comments to R2-19-12. Notice of Judicial Appeal; Transmitting the Transcript:

The comments of the Arizona State Bar suggested a modification of the language used to describe the appeals covered by the rule. The OAH agrees with the recommendation of the State Bar.

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

None

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

None

14. **Were the rules previously adopted as emergency rules?**

No

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

**TITLE 2. ADMINISTRATION**

**CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS**

**ARTICLE 1 PREHEARING AND HEARING  
PROCEDURES**

R2-19-101. Definitions

R2-19-102. Applicability

R2-19-103. Request for Hearing

Section

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- R2-19-104. Assignment of Administrative Law Judge: Setting the Hearing  
R2-19-105. Ex Parte Communications  
R2-19-106. Motions  
R2-19-107. Computing Time  
R2-19-108. Filing Documents  
R2-19-109. Consolidation or Severance of Matters  
R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing  
R2-19-111. Vacating a Hearing  
R2-19-112. Prehearing Conference  
R2-19-113. Subpoenas  
R2-19-114. Telephonic Testimony  
R2-19-115. Rights and Responsibilities of Parties  
R2-19-116. Conduct of Hearing  
R2-19-117. Failure of Party to Appear for Hearing  
R2-19-118. Witnesses; Exclusion from Hearing  
R2-19-119. Proof  
R2-19-120. Disruptions  
R2-19-121. Hearing Record  
R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript

**ARTICLE 1. PREHEARING AND HEARING PROCEDURES**

**R2-19-101. Definitions**

The following definitions apply unless otherwise stated:

1. "Agency" means the department, board, or commission from which a matter originates.
2. "Matter" means a contested case or appealable agency action.

**R2-19-102. Applicability**

- A.** These rules apply to any matter heard by the Office of Administrative Hearings.
- B.** An administrative law judge may waive the application of any of these rules to further administrative convenience, expedition, and economy if:
1. The waiver does not conflict with law, and
  2. The waiver does not cause undue prejudice to any party.
- C.** If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules for guidance.

**R2-19-103. Request for Hearing**

- A.** An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:
1. Caption of the matter, including the names of the parties;
  2. Agency matter number;
  3. Identification of the matter as a contested case or appealable agency action;
  4. In an appealable agency action, the date the party appealed the agency action;
  5. Estimated time for the hearing;
  6. Proposed hearing dates;
  7. Any request to expedite or consolidate the matter; and
  8. Any agreement of the parties to waive applicable time limits to set the hearing.
- B.** The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

**R2-19-104. Assignment of Administrative Law Judge: Setting the Hearing**

Within 7 days of the Office's receipt of a request for hearing, the Office shall provide the agency in writing with:

1. The name of the administrative law judge assigned to hear the matter;
2. The date, time, and location of the hearing; and
3. The docket number assigned by the Office.

**R2-19-105. Ex Parte Communications**

A party shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

**R2-19-106. Motions**

**A. Purpose.** A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:

1. Consolidation or severance of matters pursuant to R2-19-109;
2. Continuing or expediting a hearing pursuant to R2-19-110;
3. Vacating a hearing pursuant to R2-19-111;
4. Prehearing conference pursuant to R2-19-112;
5. Quashing a subpoena pursuant to R2-19-113;
6. Telephonic testimony pursuant to R2-19-114; and
7. Reconsideration of a previous order pursuant to R2-19-115.

**B. Form.** Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.

**C. Time Limits.** Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

**D. Response to Motion.** A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.

**E. Oral Argument.** A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.

**F. Rulings.** Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

**R2-19-107. Computing Time**

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

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**R2-19-108. Filing Documents**

- A. Docket.** The Office shall open a docket for each matter upon receipt of a request for hearing. All documents filed in a matter with the Office shall be date stamped on the day received by the Office and entered in the docket.
- B. Definition.** "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. Form.** A party shall state on the document the name and address of each party served and how service was made pursuant to subsection (E). A document shall contain the agency's caption and the Office's docket number.
- D. Signature.** A document filed with the Office shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. Filing and Service.** A copy of a document filed with the Office shall be served on all parties. Filing with the Office and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile.
- F. Date of Filing and Service.** A document is filed with the Office on the date it is received by the Office, as established by the Office's date stamp on the face of the document. A copy of a document is served on a party as follows:
1. On the date it is personally served.
  2. Five days after it is mailed by express or first class mail.
  3. On the date of the return receipt if it is mailed by certified mail.
  4. On the date indicated on the facsimile transmission

**R2-19-109. Consolidation or Severance of Matters**

- A. Standards for consolidation.** An administrative law judge may order consolidation of pending matters, if:
1. There are substantially similar factual or legal issues, or
  2. All parties are the same.
- B. Determination.** When different administrative law judges are assigned to the matters that are the subject of the motion for consolidation, the motion shall be filed with the administrative law judge assigned to the matter with the earliest pending hearing date.
- C. Order.** The administrative law judge shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The administrative law judge shall designate the controlling docket number and caption to be used on all future documents.
- D. Severance.** The administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own review, or a party's motion.

**R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing.**

- A. Continuing or Expediting a Hearing.** When ruling on a motion to continue or expedite, the administrative law judge shall consider such factors as:
1. The time remaining between the filing of the motion and the hearing date;
  2. The position of other parties;
  3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
  4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and

5. The status of settlement negotiations.

- B. Reconvening a Hearing.** The administrative law judge may recess a hearing and reconvene at a future date by a verbal ruling.

**R2-19-111. Vacating a Hearing**

An administrative law judge shall vacate a calendared hearing and return the matter to the agency for further action, if:

1. The parties agree to vacate the hearing;
2. The agency dismisses the matter;
3. The non-agency party withdraws the appeal; or
4. Facts demonstrate to the administrative law judge that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

**R2-19-112. Prehearing Conference**

- A. Procedure.** The administrative law judge may hold a prehearing conference. The conference may be held telephonically. The administrative law judge may issue a prehearing order outlining the issues to be discussed.
- B. Record.** The administrative law judge may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

**R2-19-113. Subpoenas**

- A. Form.** A party shall request a subpoena in writing from the administrative law judge and shall include:
1. The caption and docket number of the matter;
  2. A list or description of any documents sought;
  3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
  4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
  5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. An Administrative Law Judge may require a brief statement of the relevance of testimony or documents.**
- C. Service of Subpoena.** Any person who is not a party and is at least eighteen years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.
- D. Objection to Subpoena.** A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E. Quashing, Modifying Subpoenas.** The administrative law judge shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
  2. The desired testimony or evidence may be obtained by an alternative method.

**R2-19-114. Telephonic Testimony**

The administrative law judge may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and

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3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

**R2-19-115. Rights and Responsibilities of Parties**

- A. Generally.** A party may present testimony and documentary evidence and argument with respect to the issues and may examine and cross-examine witnesses.
- B. Preparation.** A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. Exhibits.** A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the administrative law judge, unless it was previously provided through discovery.
- D. Responding to Orders.** A party shall comply with an order issued by the administrative law judge concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the administrative law judge to reconsider the order.

**R2-19-116. Conduct of Hearing**

- A. Public access.** Unless otherwise provided by law, all hearings are open to the public.
- B. Opening.** The administrative law judge shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations.** The administrative law judge shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D. Opening Statements.** The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the administrative law judge.
- E. Order of presentation.** After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. Examination.** A party shall conduct direct and cross examination of witnesses in the order and manner determined by the administrative law judge to expedite and ensure a fair hearing. The administrative law judge shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument.** When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the administrative law judge. The administrative law judge may permit or require closing oral argument to be supplemented by written memoranda. The administrative law judge may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the administrative law judge may prescribe.
- H. Conclusion of hearing.** Unless otherwise provided by the administrative law judge, the hearing is concluded upon the submission of all evidence, the making of final argument, or

the submission of all post hearing memoranda, whichever occurs last.

**R2-19-117. Failure of Party to Appear for Hearing**

If a party fails to appear at a hearing, the administrative law judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the agency for any further action.

**R2-19-118. Witnesses; Exclusion from Hearing**

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the administrative law judge, the administrative law judge may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

**R2-19-119. Proof**

- A. Standard of proof.** Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of Proof.** Unless otherwise provided by law:
1. The party asserting a claim, right, or entitlement has the burden of proof;
  2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
  3. The proponent of a motion shall establish the grounds to support the motion.

**R2-19-120. Disruptions**

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the administrative law judge may order the disruptive person to leave or be removed.

**R2-19-121. Hearing Record**

- A. Maintenance.** The Office shall maintain the official record of a matter.
- B. Transfer of record.** Before an agency takes final action, the agency may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.
- C. Release of exhibits.** Exhibits shall be released:
1. Upon the order of a court of competent jurisdiction; or
  2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

**R2-19-122. Notice of Judicial Appeal; Transmitting the Transcript**

- A. Notification to the Office.** Within 10 days of filing a complaint for judicial review of a final administrative decision based on or resulting from a recommended decision of an administrative law judge, the party shall file a copy of the complaint with the Office. The Office shall then transmit the record to the Superior Court.
- B. Transcript.** A party requesting a transcript shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with 1 unbound copy.

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**TITLE 3. AGRICULTURE**

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

**PREAMBLE**

1. **Sections Affected**

R3-4-708 R3-4-717 R3-4-737	<b><u>Rulemaking Action</u></b> Amend Amend Amend
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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):**

Authorizing statute: A.R.S. § 3-487  
Implementing statute: A.R.S. § 3-487
  
3. **The effective date of the rules:**

February 3, 1999
  
4. **A list of all previous notices appearing in the Register addressing the final rule.**

Notice of Rulemaking Docket Opening: 4 A.A.R. 1925, July 17, 1998.  
Notice of Proposed Rulemaking: 4 A.A.R. 2326, September 4, 1998.  
Notice of Supplemental Rulemaking: 4 A.A.C. 3474, October 30, 1998.
  
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Shirley Conard, Rules Specialist
Address:	Arizona Department of Agriculture 1688 West Adams, Room 124 Phoenix, Arizona 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
  
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking revises the sampling procedure for soluble solids in melons and clarifies that a container shall not bear deceptive information.

R3-4-708(C), which specifies the "maturity sample and lot tolerance chart" created confusion within the industry. When cantaloupe samples were taken, it was difficult to follow the chart because of conflicting data and variances. This data could result in inconsistent sampling and create an adverse economic impact. When this Section was last promulgated it was based upon California's maturity sample and lot tolerance chart. Since that time, California has removed this chart from their requirements for the same reason the Department is requesting removal in this rulemaking. The sampling method proposed in R3-4-708(C) has been requested, and approved, by industry and the Department, as a fair way of sampling the product.

Standard container addition. The new standard container size listed in R3-4-708(G), conforms to the dimensions of the returnable produce containers proposed by the produce industry, and fits on the standard 48" X 40" pallet better than any of the other melon cartons currently in use.

Bulk container depth addition. Market forces have dictated that 24" and 36" bins are not suitable in certain applications. Major chain stores have embraced the concept of mass displays using the 18" and 48" bin depths and through this rulemaking producers are responding to that demand.

The 1991-92 legislative session brought about new statutes repealing, or delay-repealing (January 1, 1994) fruit, vegetable and citrus fruit standards, inspections, licensing, administration, and assessments. The Department's January 6, 1994, rulemaking transferred these areas to rule. However, the requirement that containers may not contain deceptive information was inadvertently excluded in that rulemaking.
  
7. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**

None.
  
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

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

It is not anticipated that the adoption of this rule will have any quantifiable financial impact on government, private industry, small business, or consumers.

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

Other than administrative costs, there is no quantifiable beneficial impact to the Department for the implementation and enforcement of this rulemaking.

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

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

**C. *Businesses Directly Affected By the Rulemaking.***

Adding a new standard container size which conforms to the dimensions of the returnable produce containers proposed by the produce industry and an alternative way to ship, using either 18" or 48" depths rather than 24" and 36" bins, provide businesses with more shipping options.

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

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

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

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

**F. *Estimated Costs and Benefits to State Revenues.***

This rulemaking will have no impact on state revenues.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The following minor changes were made at the request of the Office of the Secretary of State:

Page 1, preamble: Chapter 1. Department of Agriculture - Administration was changed to Chapter 4. Department of Agriculture - Plant Services Division.

Page 8, subsection (1)(a): "First" was changed to "1st."

The following substantive changes were made at the request of industry comments and noticed in the Notice of Supplemental Proposed Rulemaking:

R3-4-708(G): Standard container addition, 23 5/8" X 15 3/4" X 7 3/4", and 18" and 48" were added to the bulk container depth.

R3-4-717(F): An 18" depth was added to bulk containers.

The following changes were made at the request of G.R.R.C. staff:

Clerical and format changes throughout the rulemaking to assure clarity and understanding and citation of the correct authority statutes.

**11. A summary of the principal comments and the agency response to them:**

None.

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

None.

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

None.

**14. Was this rule previously adopted as an emergency rule?**

No.

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

**TITLE 3. AGRICULTURE**

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

**ARTICLE 7. FRUITS AND VEGETABLES  
STANDARDIZATION**

		R3-4-717.	Melon Standards (Persian Melons, Casabas, Crenshaw, Honeydew, Honeyball, Other Specialty Melons, and Watermelons)
Section R3-4-708.	Cantaloupe Standards, Containers, Packing Arrangements	R3-4-737.	Container Labeling for Fruit and Vegetables

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**ARTICLE 7. FRUITS AND VEGETABLES**  
**STANDARDIZATION**

**R3-4-708. Cantaloupe Standards, Containers, Packing Arrangements**

**A. Definitions.**

1. "Mature" means that the a cantaloupe has reached the stage of maturity which will insure development that ensures the proper completion of the normal ripening process, and the arils which that surround the seed during the development of maturity have been are absorbed, and, in addition, that the juice of the edible portion contains not less than 9% soluble solids as determined by the standard hand refractometer.

a. Soluble solids determination: Select means selecting the least mature looking cantaloupes and remove 2 1/2 inch diameter plugs from opposite sides of each melon, 1/2 the distance between the stem and blossom ends. Remove Removing the outer 3/8 inch of the rind from the plugs, however, use all the rag on the inside of the plugs. Extract the juice from the plugs and determine the percentage of soluble solids by using the a standard hand refractometer.

b. Low sugar indicators: Poor means the cantaloupe has poor netting, dark spots, or sunburn, soft melons, dark green color, or is soft, and melons which have has been torn from the vine or have not reached before reaching full slip.

2. "Lidded or closed" means:

a. In the case of corrugated fiberboard containers, the container opening is The opening of corrugated fiberboard containers is completely covered, except for necessary ventilation openings, with The container covering is made of material similar to that used in the construction of the sides and bottom of such the container and is securely attached to the top.

b. In the case Forty percent or more of nailed wooded wooden, wirebound, or other containers, 40% or more of the container opening is openings is covered with material similar to that used in the construction of the sides and bottoms of such the container and is securely attached to the top.

3. "Serious damage" includes damage caused by bruises, sunburn, growth cracks, cuts, sponginess, flabbiness, or wilting.

**B.** Cantaloupes shall be mature, but not overripe, fairly well-netted, and free from mold, decay, and insect damage which has penetrated or damaged the edible portion of the cantaloupe and free from serious damage.

**C.** If a preliminary inspection of the cantaloupes indicates that further testing is required, as delineated prescribed in R3-4-739(A) and (B), the inspector shall initiate the following maturity sampling and tolerance tests: randomly select the following number of melons and average the results to determine the percent of soluble solids: The minimum number of cantaloupes selected from a container for maturity sampling is as follows:

Melons Per Container	Min. Melons Tested
9 or less	7
12	8
15	11
18	13
22	15
23	16

**MATURITY SAMPLE AND LOT TOLERANCE CHART**

Melons Per Min. No. Grate	Test Melons	Number Crates	Each Crate No.-Low-Tests Passable	Lot
2-20	4	2	2	Yes
2-20	4	3	2	No
2-20	4	2	3	No
21-40	6	2	3	Yes
21-40	6	3	3	No
21-40	6	2	4	No
41-60	8	2	4	Yes
41-60	8	3	4	No
41-60	8	2	5	No
61-80	10	12	15	Yes
61-80	10	3	5	No
61-80	10	2	6	No

**D.** Not more than five immature melons from two bulk containers or less shall be allowed from one bulk container lot. Not more than five immature melons from more than two bulk containers shall be allowed from each of two bin lots or more.

**E.D** Not more than 5%, by count, of the cantaloupes in any one container 1 lot shall be allowed for any one cause 1 defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**F.E.** All cantaloupes in each container shall be of one 1 variety or of similar varietal characteristics.

**G.F.** Cantaloupes packed in the standard containers shall be uniform in size and shall conform with the following:

1. All containers of cantaloupes shall have the following information appearing in plain sight and in plain letters on one 1 outside end:

a. The name of the person who first 1st packed or authorized the packing of the cantaloupe, or the name under which such the packer is engaged in does business; and,

b. A sufficiently explicit The address to permit ready location of such the person or business.

2. Each container of cantaloupes shall be conspicuously marked in letters of not less than 1/2 inch in height, stating the exact number of melons packed therein within the container.

3. All cantaloupes shall be packed in a regular compact arrangement in a closed standard container.

4. Standard containers shall be in counts of 6, 9, 12, 15, 18, 22/23 22, 23, 30, or 36.

5. Consumer containers or single layer containers shall be in counts of 5, 6, 8, or 9.

**H.G.** Standard and bulk containers shall conform to the following inside dimensions, in terms of inches:

Containers	Length	Width	Depth
Standard containers	16-7/16	13-9/16	6
and consumer packs	16	12-13/16	10-1/2
	21-7/8	12	12

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21-7/8 to		
22-1/8	13	13 to 13-1/2
22-1/2	13	13-1/2
21-7/8 to 22	13	9 to 9-1/2
22 to 22-3/8	13	9 to 10
22	13	10-1/2
12-7/8	12-7/8	15-1/2 to 16
16-3/8 to	12-3/8 to	9-3/4 to
17	13-1/4	10-1/2
16-1/2	13-5/8 to 14	10-1/4
22-1/8	16	6-3/4 to 8-3/4
22-1/8	14	7-3/4
22-1/8	14-1/2	5-3/4
<u>23 5/8</u>	<u>15 3/4</u>	<u>7 3/4</u>
17	15-1/4	6-1/2
Bulk containers	48	38
		18", 24", or 36", or 48"

**R3-4-717. Melon Standards (Persian Melons, Casabas, Crenshaw, Honeydew, Honeyball, Other Specialty Melons and Watermelons)**

**A. Definitions.**

1. "Mature" means that the melon has reached the stage of maturity which will ensure development that ensures the proper completion of the normal ripening process, and that the arils which surround the seed during the development of maturity have been absorbed. In the case of honeyball and honeydew melons, the juice of the edible portion of honeyball and honeydew melons shall contain not less than 10% soluble solids as determined by the standard hand refractometer. If a preliminary inspection of the melons indicates that further testing is required, as delineated prescribed in R3-4-739(A) and (B), the inspector shall initiate conduct the following maturity sampling and tolerance tests and average the results to determine the percent of soluble solids:

a. When sampling honeydews and honeyball melons for maturity in lot containers over more than 600, three 3 melons shall be added for each additional 500 melons or fraction thereof. The minimum number of melons selected from a container for maturity sampling of honeydews in containers shall consist of the following is as follows:

Containers in Lot	Containers Sampled
50 or less	3
51 to 200	5
201 Up to 400	7
401 to 600	9

b. When sampling honeydews and honeyball melons for maturity in bulk containers, select 13 7 of the least mature looking honeydews or honeyballs shall be selected at random from the top of the bulk container. The minimum number of melons selected from a container for maturity sampling of honeydews or honeyballs in bulk containers shall consist of the following is as follows:

No. of Bulk Containers	Containers Sampled
Less than 10	2
10 to 30	3
31 to 50	4
51 or More	5

c. Except in the case of for yellow flesh watermelons, the flesh of the a watermelon shall be colored to a degree not less than that indicated by Hue 4, Chrome H, in Plate 1, of A. Maerz and M. Rea

Paul Dictionary of Color, First Edition, published 1930, and which is incorporated herein by reference and does not include any later amendments or editions of the incorporated matter. This color standard is on file with the Office of the Secretary of State, or may be examined in the Fruit and Vegetable Standardization Offices, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona, 85007; or in the Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, South Building, Washington, D.C., 20250.

2. "Serious damage" includes:

- a. ~~In the case of melons, damage~~ Damage to a melon caused by growth cracks, cuts, bruises, sunburn, or softness.
- b. ~~In the case of watermelons, damage~~ Damage to a watermelon caused by growth cracks, cuts, bruises, sunburn, beetle damage, whiteheart, rindrot, or softness.
  - i. ~~Beetle damage shall be considered is~~ serious damage when it affects an area of ~~over more than~~ more than 10% of the total surface of the a watermelon.
  - ii. ~~Whiteheart shall be considered is~~ serious damage if apparent on internal examination.
  - iii. ~~Sunburn shall be considered is~~ serious damage when the sunburned area, regardless of size, is devoid of green coloration and is turning brown.
  - iv. ~~Rindrot shall be considered is~~ serious damage when the distinct brown color or decay in the edible flesh of at least 1 inch in aggregate occurs in the edible portion of the watermelon.

B. All melons, except watermelons, when being packed or offered for sale shall be:

- 1. ~~mature~~ Mature but not overripe; ~~and shall be free~~
- 2. ~~Free~~ from mold, decay, and insect damage which has penetrated or damaged the edible portion of the melon; and
- 3. ~~Free~~ Free from serious damage.

C. Watermelons shall be:

- 1. ~~fairly~~ Fairly well-shaped; ~~mature;~~
- 2. ~~Mature,~~ but not overripe; ~~and shall be free~~
- 3. ~~Free~~ from mold, decay, insect and beetle damage; and
- 4. ~~free~~ Free from serious damage.

D. Not more than 5%, by count, of the melons in any one 1 lot shall be allowed for any one defect 1 defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

E. Standard containers in which melons are packed shall have the following information appearing in plain sight and in plain letters on one 1 outside end:

- 1. The name of the person who first packed or authorized the packing of the melons, or the name under which ~~such the packer is engaged in~~ does business; and,
- 2. A sufficiently explicit The address to permit ready location of ~~such the~~ person or business.

F. Bulk containers in which melons are packed shall be 18", 24", 36", or 42" in depth.

**R3-4-737. Container Labeling for Fruit and Vegetables**

A. All containers shall bear in plain sight and plain letters on one 1 outside panel the following:

- 1. The name of the shipper;
- 2. The city, state, and zip code of the shipper:

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3. The common or generic name of the commodity in each container;
4. The count, measure, or net weight of the commodity contained in each container, except in the case of for bulk containers.
- B.** No container shall bear any false or misleading statement.

**NOTICE OF FINAL RULEMAKING**

**TITLE 3. AGRICULTURE**

**CHAPTER 5. DEPARTMENT OF AGRICULTURE  
STATE AGRICULTURAL LABORATORY**

**PREAMBLE**

**1. Sections Affected**

R3-5-101  
R3-5-102  
Table 1  
R3-5-103  
R3-5-104  
R3-5-105  
R3-5-105  
R3-5-106  
R3-5-107  
R3-5-108  
R3-5-109  
R3-5-110

**Rulemaking Action**

Amend  
Amend  
New Table  
Amend  
Amend  
Repeal  
New Section  
Amend  
Amend  
Repeal  
Repeal  
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. §§ 3-147, 41-1073.

Implementing statute: A.R.S. §§ 3-145, 3-146, 3-147, 3-148, 41-1073, 41-1074, 41-1075, 41-1076.

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

February 4, 1999

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 2973, October 24, 1997.

Notice of Proposed Rulemaking: 4 A.A.R. 2882, October 9, 1998.

Notice of Public Information.: 4 A.A.R. 3679, November 6, 1998.

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

Name: Shirley Conard, Rules Specialist

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

Telephone: (602) 542-0962

Fax: (602) 542-5420

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

This rulemaking clarifies existing language, updates definitions, adds licensing time-frames, and provides the State Agricultural Laboratory with responsibilities previously administered by the Arizona Department of Health and the Environmental Services Division of the Arizona Department of Agriculture.

**R3-5-101. Definitions.** This Section defines terms used within the Article.

**R3-5-102. Certification.** This Section establishes the requirements for the certification of samplers and laboratories for agricultural services. The rule provides specific information required on an initial and renewal application for both a laboratory and certified sampler, specifies that a laboratory shall notify the Assistant Director within a specific time period when a change is made that affects the information on the application, and establishes time-frames pursuant to A.R.S. § 41-1072.

A.R.S. § 41-1072 et seq., requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes.*

1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);

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2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and
3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The State Agricultural Laboratory researched its certifications to determine whether they constituted a "license" as contemplated by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . [n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues. The definition of "overall time-frame" is the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-4-102. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. The time-frames given are the "maximum" to allow personnel to thoroughly analyze and verify information contained in the application.

Although the term "licenses" includes any agency permit, certificate, approval, registration, charter or similar form of permission required by law, The State Agricultural Laboratory issues only "certifications" and this rulemaking will reflect that term.

R3-5-103, Certified Services. This Section lists the laboratory testing and sampling services available for specific certification. The proposed rule provides the applicant with the opportunity of being certified in areas other than those listed.

R3-5-104, Fees. This Section establishes the fees for initial and renewal certification.

R3-5-105, Laboratory Requirements. This Section contains requirements for quality assurance, laboratory test results, sanitation, safety, and proficiency testing, which was edited and transferred from A.A.C. R9-17-315, Approved laboratories, and combined with current requirements in R3-5-105, Precision and accuracy control program; R3-5-108, Physical, sanitary and safety requirements; and R3-5-109, Granting of certification.

R3-5-106, Method of Analyzing and Testing. This Section establishes that the laboratory must either use procedures established by the State Agricultural Laboratory or obtain permission from the State Agricultural Laboratory to use other established methods and procedures.

R3-5-107, Check Sample Testing Program. This Section explains the procedures involved in verifying that certified laboratories are performing properly. The rulemaking describes the information currently required.

R3-5-108, Referee Laboratory. This Section establishes the guidelines when determining laboratory result disputes.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.

None.

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

Not applicable.

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

It is not anticipated that these rules will have any impact on private industry, small business, or consumers. The licensing time-frames provides codification of the procedures currently observed by the State Agricultural Laboratory.

A. *Estimated Costs and Benefits to the State Agricultural Laboratory.*

This rulemaking will remove unnecessary information from the Article and add information and requirements already implemented by the State Agricultural Laboratory, thereby simplifying reporting requirements.

When the State Agricultural Laboratory receives incomplete applications, the laboratory either obtains the missing information by telephone, or sends the applicant a letter explaining what information is missing. R3-5-102(H) codifies the time-frames and procedures already observed by the State Agricultural Laboratory.

The State Agricultural Laboratory does not anticipate that penalties will be incurred for noncompliance with the overall time-frames.

The State Agricultural Laboratory issued 665 certifications in 1997 that required time-frames. The estimated costs for training employees to understand the time-frame procedure, how to calculate the various review periods when additional infor-

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mation is requested, and the actual paperwork necessary to track each license will cost the Laboratory approximately \$1.25 per application. If the same number of licenses are issued each year, this results in a \$831.25 yearly expenditure for administering these rules.

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

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

**C. *Businesses Directly Affected By the Rulemaking.***

Any businesses applying for a certification will follow current procedures and practices and no additional costs shall occur. The initial and renewal fees specified in R3-4-104 and the charge for time and mileage are costs currently charged for certification and do not reflect new fees to the program. The proposed time-frames will provide an intangible benefit for these businesses by identifying when the Laboratory will grant or deny a certification.

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

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

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

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

**F. *Estimated Costs and Benefits to State Revenues.***

This rulemaking will have no impact on state revenues unless the Department does not grant or deny a certification within the established time-frames and is required to refund fees and pay a penalty.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

When determining whether a laboratory has qualified personnel, the State Agricultural Laboratory reviews not only the training and experience of personnel, but may review the educational experience as well. The word "education" was added to R3-5-105(B)(1)(e).

Minor grammatical and editing changes were made at the request of G.R.R.C. staff to provide clarity and understanding to the rulemaking. The definitions for "dairy" and "non-dairy" were removed as they are not used in the rulemaking. The subsections were renumbered accordingly.

**11. A summary of the principal comments and the agency response to them:**

None.

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

None.

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

R3-5-105(E) Identification and Listing of Hazardous Waste, 40 CFR 261, amended August 12, 1997, and Standards Applicable to Generators of Hazardous Waste 40 CFR 262, amended August 12, 1997.

**14. Was this rule previously adopted as an emergency rule?**

No.

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

**TITLE 3. AGRICULTURE**

**CHAPTER 5. DEPARTMENT OF AGRICULTURE  
STATE AGRICULTURAL LABORATORY**

**ARTICLE 1. SAMPLING AND LABORATORY  
CERTIFICATION**

Section	
R3-5-101.	Definitions
R3-5-102.	Certification; application Renewal; Termination
Table 1.	Time-frames
R3-5-103.	Certified services Services
R3-5-104.	Fees
R3-5-105.	Precision and accuracy control program
R3-5-105.	Laboratory Requirements
R3-5-106.	Methodology Methods of Analyzing and Testing
R3-5-107.	Check sample testing program Sample Testing Program
R3-5-108.	Physical, sanitary and safety requirements

R3-5-109.	Granting of certification
R3-5-110.	Referee laboratory Laboratory

**ARTICLE 1. SAMPLING AND LABORATORY  
CERTIFICATION**

**R3-5-101. Definitions**

**A.** When used in this Article, words and terms defined in A.R.S. § 3-141 have the same meaning.

**B.** In this Article, unless the context otherwise requires In addition to the definitions provided in A.R.S. §§ 3-101 and 3-141, the following terms apply to this Chapter:

1. "Accuracy" is means the closeness of an observed measurement to the true or the presently-accepted value.

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2. ~~"Assistant Director" is the person who is responsible for the administration, operation and control of the State Agricultural Laboratory under the supervision of the Director~~
3. ~~"Certificate" means the document issued by the Commission through its Director indicating the services which the applicant is qualified to perform.~~
4. ~~"Certified agricultural laboratory" means a laboratory which has received a certificate from the Commission through its Director.~~
5. ~~"Certified sample" means a sample obtained by a procedure and method published in professional journals or manuals available in Arizona in the State Agricultural Laboratory. A list of the journals and manuals is filed with the Secretary of State.~~
6. ~~"Commission" means the Commission of Agriculture and Horticulture.~~
7. ~~"Director" means the Director of the Commission of Agriculture and Horticulture.~~
8. ~~"Hazardous materials" means any substance that is capable of causing peril or danger to plants, animals or human health except those substances emitting ionizing radiation.~~
- 9.2. ~~"Person" means an individual, partnership, corporation or other legal entity.~~
- 10.3. ~~"Precision" is means the agreement of repeated observations made under the same conditions.~~
4. "Quality assurance" means an integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of definable quality.

**R3-5-102. Certification; application Renewal; Termination**

- A. Laboratory certification. Any person who desires to who operates a certified agricultural laboratory performing agricultural laboratory services pursuant to A.R.S. § 3-145 or to collect certified samples for the State Agricultural Laboratory or any certified agricultural laboratory shall apply to the Commission for a certificate on a form provided by the Assistant Director. The application form shall be signed by both the owner of the laboratory and the person supervising the laboratory.
1. Provide the following information on the Application For Laboratory Certification and submit it with the appropriate fee to the State Agricultural Laboratory:
    - a. The name, business and mailing address, and telephone and facsimile numbers of the laboratory;
    - b. The name, address, telephone number, social security number, and signature of the owner;
    - c. The name, address, telephone number, and signature of each person supervising the agricultural laboratory service.
  2. Provide a comprehensive description of all programs, services and functions;
  3. List each service requested for certification, detailing the method or procedure used, including specific references to any publication where the method or procedure is described.
- B. ~~Applications must be completely filled out and shall be accompanied by the nonrefundable fee set forth in R3-1-104. All documentation submitted for certification must be current. The supervisor of the laboratory must supervisor shall notify the Assistant Director in writing within 30 days of any changes in information provided in the certification form,~~

including location, laboratory supervisor owner, or other information. Failure to comply with any rule in this Title is cause for revocation of certification.

- C. ~~If the application for certification is for an area or program a service not currently conducted by the State Agricultural Laboratory and the necessary expertise for review does not exist within the commission State Agricultural Laboratory, the Commission, through its Director, shall establish a committee pursuant to A.R.S. § 3-106 to of experts from private industry and university personnel whose technical or working expertise are similar to the area of application. The applicant will be provided a list of experts and their credentials. They shall then advise the Commission Department of the proper procedures for certification in that area.~~
- D. ~~The Director or the Assistant Director shall submit to the Commission all completed applications for certification or renewal of certification along with all required fees and proof of any current certificate, license or accreditation.~~
- D. Certified sampler. Any person who collects certified samples shall provide the following information on the Sampler Certification Application and score at least 90% on a written sampling test determined by the type of sample certification requested:
  1. The name and social security number of the sampler;
  2. The name, street and mailing address, and telephone and facsimile number of the applicant's employer;
  3. The name and signature of the employer;
  4. The mailing address and telephone number of the owner, if different than subsection (D)(1)(b);
  5. The date of the application;
  6. The name and signature of the applicant's supervisor or manager;
  7. The current certification number, if applicable;
  8. Whether the applicant possesses a State Agricultural Laboratory-approved embossing seal;
  9. A list of each service requested for certification.
  10. A signature affirming that the sampler will collect samples as prescribed by the State Agricultural Laboratory and affix the embossing seal on each sample collection report.
- E. ~~The Commission shall grant or renew or refuse to grant or to renew a certificate within 30 working days of its receipt of the application and the Assistant Director's recommendation.~~
- E. Certification renewal.
  1. A laboratory owner or sampler shall file a renewal application at least 30 days before the expiration date of the current certification and provide the following information:
    - a. The name, business and mailing address, and telephone and facsimile numbers of the laboratory;
    - b. The name, address, telephone number, social security number, and signature of the owner;
    - c. The name, address, telephone number, and signature of each person supervising a certified agricultural service.
  2. An application received less than 30 days before the expiration date is untimely and the applicant shall reapply as an initial applicant.
  3. Any application received more than 60 days before the expiration date of the current certification shall be returned to the applicant for resubmittal.
  4. The current certification shall remain valid until a determination is made on the renewal application.
- F. Certification termination. A laboratory owner or sampler may terminate the certification, either in part or in its entirety,

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by notifying the Assistant Director in writing within 30 days before the effective date of the termination.

- G. Additional services.** A laboratory owner may add services to the current certification by following the certification procedure in subsections (A) through (C), except that the Assistant Director may waive the on-site survey requirement.

**H. Time-frames.**

1. **Overall time-frame.** The State Agricultural Laboratory shall issue or deny a certification within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
2. **Administrative completeness review.**
  - a. The appropriate administrative completeness review time-frame established in Table 1 begins on the date the State Agricultural Laboratory receives an application. The State Agricultural Laboratory shall notify the applicant in writing within the administrative completeness review time-frame whether the application is incomplete. The notice shall specify what information is missing. If the State Agricultural Laboratory does not provide notice to the applicant within the administrative completeness review time-frame, the application is complete.
  - b. An applicant with an incomplete certification application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the State Agricultural Laboratory mails the notice of missing information to the applicant until the date the State Agricultural Laboratory receives the information.
  - c. If the applicant fails to submit the missing information before the expiration of the completion request period, the State Agricultural Laboratory shall close the file, unless the applicant requests an

extension. An applicant whose file has been closed may obtain a certification by submitting a new application.

- d. If a laboratory requests certification of a service not currently offered, 90 additional days shall be added to the administrative completeness review to establish a protocol for granting certification.
3. **Substantive review.** The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.
  - a. **On-site survey.**
    - i. Within 30 days of receipt of a complete application, the State Agricultural Laboratory shall schedule an on-site survey of the applicant's laboratory facilities; or
    - ii. The Assistant Director may waive the on-site survey required for a renewal applicant if the renewal applicant is in compliance with this Article.
  - b. If the State Agricultural Laboratory makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive completeness review is suspended from the date the State Agricultural Laboratory mails the request until the information is received by the State Agricultural Laboratory. If the applicant fails to provide the information identified in the written request within the response to additional information period, the State Agricultural Laboratory shall deny the license.
  - c. If the application is denied, the State Agricultural Laboratory shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Table 1. Time-frames

**Time-frames (Calendar Days)**

Certification	Authority	Administrative Completeness Review	Response to Completion Period	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Laboratory Certification	3-145					
•New	R3-5-102	14	30	60	90	74
•Renewal		14	7	30	14	44
•Certification request for service not currently offered		104	30	60	90	74
Sampler Certification	3-145	14	30	90	90	104
	R3-5-102					

**R3-5-103. Certified services Services**

**A.** A certificate may be obtained in addition to certification for the services established in A.R.S. § 3-141(1), the applicant may apply for certification for any or all of the following agricultural laboratory services including sampling:

1. Determination of specific element and ion content of water for irrigation or livestock purposes;
2. Determination of specific element and ion content of plant tissue for the evaluation of plant nutrients;

3. Determination of specific element and ion content of soil for the evaluation of plant nutrient content soil fertility and for element and ion content which might that may cause plant growth limitations;
4. Determination of contents of processed meats and meat food products including the percentage of meat and non-meat ingredients;
5. ~~Verifying for~~ Verification of an analysis for the accuracy of the label guaranteed certified samples for guar-

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antees of feeds, fertilizers, animal manures, plant growth stimulants, soil amendments, soil conditioners, or pesticides;

6. Verification of planting seed germination, percentages, purity analysis, or other named seed or plant propagative material testing procedures;
7. Identification of insects, plant pathogens, animal pathogens, nematodes, or animal parasites;
8. Testing of milk products for quality and market standards;
9. Determination of mycotoxins, antibiotics, or drug residues in plant or animal tissue;
10. Determination of mycotoxins, antibiotics, or drug residues in plant or animal products, animal feed or feed ingredients;
11. Determination of specific pesticide, or hazardous or toxic elements in plant or animal tissue;
12. Determination of specific pesticide or hazardous or toxic elements in air, water used in livestock production, irrigation water, soil, agricultural product or animal feed;

**13. Collection of samples.**

- B. An applicant may submit a written request to the State Agricultural Laboratory for a certified agricultural service not already established.**

**R3-5-104. Fees**

The application fee for initial certification is \$200. The application fee for renewal of a certificate is \$100. The applicant shall provide the Department with the following fees before the certification is granted:

1. Initial fee, \$200 per certified service; or
2. Renewal fee, \$100 per certified service; and
3. Time and mileage as prescribed in 38 A.R.S. 4, Articles 1 and 2.

**R3-5-105. Precision and accuracy control program**

Each applicant shall submit documentation that it has a precision and accuracy control program for each certified service it provides.

**R3-5-105. Laboratory Requirements**

- A. A laboratory certified under this Section shall maintain and update a master file for all certified agricultural laboratory services. The master file shall contain:**
1. A letter of certification stating the period of validity;
  2. A quality assurance manual, and all updates, approved by the Assistant Director;
  3. Documentation of competence and experience in testing for the service requested;
  4. Documentation that establishes the laboratory personnel's capabilities;
  5. Documentation for working knowledge of the applicable test standards and methods for approval of the service and the testing analyses for each service;
  6. A written standard operating procedure for testing when required and approved by the Assistant Director;
  7. Reports of all sample results for the last 3 years and all data generated during the testing.
  8. Laboratory equipment lists, including:
    - a. The type and manufacturer;
    - b. The serial and model number; and
    - c. The date of the last calibration, if applicable.
  9. Receiving and shipping records of all samples and supplies relating to the certification;
  10. Quality control documentation;
  12. Calibration certificates; and

**13. All correspondence relating to the certification and operation of the program.**

- B. The testing laboratory shall maintain and update a quality assurance manual that describes actions taken by the laboratory to ensure that routinely generated analytical data are scientifically valid and defensible and are of known and acceptable precision and accuracy. The manual shall contain:**

1. A description of the management and responsibilities of personnel related to the certification that includes:
  - a. The legal name, address, and telephone number of the main office or parent company;
  - b. The name, location of the laboratory, and telephone number, if different from subsection (B)(1)(a);
  - c. An organization outline or chart showing the titles or positions of all personnel relating to the certification and their reporting relationships relative to a certification request, including relationship between administration, operation, and quality control;
  - d. The names and resumes of the individuals assigned to each of the positions identified in subsection (B)(1)(c), or the personnel requirements for the individuals employed in those positions;
  - e. Verification that personnel have a working knowledge of the applicable test standards and test methods, and are qualified by education, training, or experience to conduct tests and analyze data to ensure the accuracy, performance, and timeliness of testing and follow-up inspections.
2. A description of the receiving, handling, and shipping controls that includes:
  - a. The visual examination of samples, upon receipt, for evidence of shipping damage;
  - b. The storage of items, while awaiting disposition, regarding the safety of personnel and the degree of protection to preclude the possibility of damage to the shipment; and
  - c. The shipping and receiving data containing the date of receipt, the name of the manufacturer, and any other data necessary to accurately record and identify samples at the laboratory.
3. A description of testing information that includes a written list of test procedures as prescribed in R3-5-106. A test procedure shall, when applicable, contain:
  - a. The nomenclature and identification of the sample;
  - b. Detailed steps and operations in sequence, including verifications made before each stage of testing;
  - c. Values for acceptance or rejection of analytical results based on permissible analytical variations;
  - d. A list of measuring equipment, specifying range, type, accuracy, and the name of the test;
  - e. An identification of any hazardous situations or operations;
  - f. A list of the precautions taken to ensure safety of personnel, and to prevent damage to test items and measuring equipment;
  - g. Test environments, conditions, and tolerances;
  - h. Special instructions for inspection or testing, such as special handling of fragile test items;
  - i. The nomenclature and designation of an applicable reference standard on which the test procedure is based;
  - j. Quality control measures for precision and accuracy using appropriate spikes, blanks, multiple

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sample analysis, or standard reference material controls to assure validity of test results.

4. Reference standards documenting that:
  - a. The accuracy of all measurement chemical standards are traceable to primary standards;
  - b. The biological specimens are verified by the Assistant Director or the Assistant Director's designee.
5. A description of an equipment maintenance program that includes:
  - a. Manufacturer's recommendations for the set-up and normal operation of each instrument and, if appropriate, the specific instructions for periodic checking of the reproducibility of the system;
  - b. Quality control procedures for determining instrument performance;
  - c. Monitoring of temperature-controlled spaces;
  - d. Certification that thermometers and analytical balances meet federal standards, if applicable;
  - e. Calibration of glassware and volumetric equipment.

**C.** The testing laboratory is responsible for the accurate calibration of testing equipment.

**D.** The testing laboratory shall maintain records for 5 years, except pesticide residue sample results and data, which shall be 7 years;

**E.** The construction and operation of the laboratory shall comply with the standards established by the Occupational Safety and Health Administration and any other applicable federal, state, county and municipal building, sanitary, safety, electrical, and fire codes for the area in which the laboratory is located. The laboratory shall comply with the disposal of hazardous waste materials established in Identification and Listing of Hazardous Waste, 40 CFR 261, amended August 12, 1997, and Standards Applicable to Generators of Hazardous Waste 40 CFR 262, amended August 12, 1997. This material is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter.

**R3-5-106. Methodology Methods of Analyzing and Testing**

A laboratory must shall, when complying with certification standards, supply the Assistant Director with the details of each this Article:

1. Use the methods and procedures for analyzing and testing used or which are referenced procedure and methods published in professional journals or manuals available in Arizona in the State Agricultural Laboratory. A list of the journals and manuals is filed with the Secretary of State, and obtain the approval of the Assistant Director, or
2. Use the methods and procedures established by the State Agricultural Laboratory.

**R3-5-107. Check sample testing program Sample Testing Program**

**A.** A laboratory applying for certification must shall participate in a check sample program approved by the Assistant Direc-

tor to demonstrate to the Assistant Director or his designee the its ability to perform with accuracy and precision each of provide those services for which certification is requested. Accuracy and precision shall be within defined limits as prescribed in the analytical method for that service or those established from past data supplied by available inter-laboratory and intra-laboratory analysis.

**B.** Individual laboratory evaluation will shall be on the basis of based on the results obtained for each check sample in relationship to results, grouped by methods, received from all laboratories participating in that check sample program. If a deficiency is noted during an on-site evaluation or in the examination of split-samples, the applying laboratory shall submit a plan of corrective action plan designated to eliminate the deficiency. The applying laboratory shall supply provide the Assistant Director with its identification number and a copy of the results for all analysis submitted to the check sample program.

**C.** The applying laboratory shall bear the costs of all analyses performed and the cost of all subsequent check samples, including the cost of any check sample service used to determine proficiency.

**R3-5-108. Physical, sanitary and safety requirements**

All certified laboratories shall be in compliance with the applicable federal, state, county and municipal building, sanitary, safety, electrical and fire codes for the area in which the laboratory is located.

**R3-5-109. Granting of certification**

The Assistant Director shall review all certification application forms for the adequacy of precision and accuracy control programs. If the Assistant Director finds that the applicant satisfied precision and accuracy requirements, he shall grant certification subject to approval by the Commission. If the Assistant Director determines that a certification application is not complete or that the precision and accuracy control programs of the laboratory applying for the certification are inadequate, the Director shall establish a committee of experts in the area of question who will advise him. The findings of both the Assistant Director and the advisory committee, through the Director, will then be referred to the Commission for its determination in the granting or denying of the certification of the laboratory making such the application. If the Commission refuses certification, the applicant may request a hearing before the Commission pursuant to A.R.S. § 3-148.

**R3-5-110. Referee laboratory Laboratory**

If two 2 certified laboratories have differing testing results or if the results of a certified laboratory are challenged by the contracting agency or other state agency, the Director may designate a laboratory to serve as a referee to assist in making a determination. All In the case of a challenge of test results, all costs incurred by said the referee laboratory shall be borne by the party losing the dispute.

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**TITLE 4. PROFESSIONS AND OCCUPATIONS**

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

**PREAMBLE**

**1. Sections Affected**

Article 1  
Article 1  
R4-11-101  
R4-11-101  
R4-11-102  
R4-11-103  
R4-11-104  
R4-11-105  
Article 2  
Article 2  
R4-11-201  
R4-11-201  
R4-11-202  
R4-11-202  
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R4-11-212  
R4-11-213  
R4-11-214  
R4-11-215  
R4-11-216  
Article 3  
Article 3  
R4-11-301  
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R4-11-301  
R4-11-302  
R4-11-302  
R4-11-303  
R4-11-303  
R4-11-304  
R4-11-304  
R4-11-305  
Article 4  
R4-11-401  
R4-11-401  
R4-11-401  
R4-11-402  
R4-11-402  
R4-11-403  
R4-11-403  
R4-11-404  
R4-11-404  
R4-11-405  
R4-11-405  
R4-11-406  
R4-11-406  
R4-11-407

**Rulemaking Action**

ReNUMBER  
New Article  
ReNUMBER  
New Section  
ReNUMBER  
ReNUMBER  
ReNUMBER  
Repeal  
Repeal  
ReNUMBER  
Amend  
ReNUMBER  
Amend  
Repeal  
ReNUMBER  
Amend  
ReNUMBER  
Amend  
Repeal  
ReNUMBER  
Amend  
Repeal  
ReNUMBER  
Amend  
Repeal  
ReNUMBER  
Amend  
Repeal  
New Section  
Repeal  
New Section  
New Section  
ReNUMBER  
Repeal  
ReNUMBER  
Amend  
ReNUMBER

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R4-11-407	Amend
R4-11-408	Renumber
Article 5	Renumber
Article 5	Amend
R4-11-501	Repeal
R4-11-501	Renumber
R4-11-501	Amend
R4-11-502	Renumber
R4-11-503	Repeal
R4-11-504	Renumber
Article 6	Renumber
Article 6	Amend
R4-11-601	Repeal
R4-11-601	Renumber
R4-11-601	Amend
R4-11-602	Renumber
R4-11-602	Amend
R4-11-603	Renumber
R4-11-603	Amend
R4-11-604	New Section
R4-11-605	New Section
R4-11-606	New Section
R4-11-607	New Section
R4-11-608	New Section
Article 7	Renumber
Article 7	Amend
R4-11-701	Renumber
R4-11-701	Amend
R4-11-702	Repeal
R4-11-702	Renumber
R4-11-702	Amend
R4-11-703	Repeal
R4-11-704	Repeal
R4-11-705	Repeal
R4-11-706	Repeal
R4-11-707	Repeal
R4-11-708	Repeal
R4-11-709	Repeal
R4-11-710	Repeal
Article 8	Renumber
Article 8	Amend
R4-11-801	Repeal
R4-11-801	Renumber
R4-11-801	Amend
R4-11-802	Renumber
R4-11-802	Amend
R4-11-803	Renumber
R4-11-804	Renumber
R4-11-805	Renumber
R4-11-806	Renumber
Article 9	Renumber
R4-11-901	Renumber
R4-11-901	Amend
R4-11-902	Renumber
R4-11-902	Amend
R4-11-903	Renumber
R4-11-903	Amend
R4-11-904	Renumber
R4-11-904	Amend
R4-11-905	Renumber
R4-11-905	Amend
R4-11-906	Renumber
R4-11-906	New Section
R4-11-907	Repeal
R4-11-908	Repeal

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R4-11-909	Renumber
Article 10	Renumber
Article 10	Amend
R4-11-1001	Renumber
R4-11-1001	Amend
R4-11-1002	Renumber
R4-11-1002	Amend
R4-11-1003	Renumber
R4-11-1004	Renumber
R4-11-1005	Renumber
Article 11	Renumber
Article 11	New Article
R4-11-1101	New Section
R4-11-1102	Renumber
R4-11-1104	Repeal
Article 12	Renumber
R4-11-1201	Renumber
R4-11-1201	Amend
R4-11-1202	Renumber
R4-11-1203	Renumber
R4-11-1203	Amend
R4-11-1204	Renumber
R4-11-1204	Amend
R4-11-1205	Renumber
R4-11-1205	Amend
R4-11-1206	Renumber
R4-11-1206	Amend
R4-11-1207	Renumber
Article 13	Renumber
Article 13	Amend
R4-11-1301	Renumber
R4-11-1301	Amend
R4-11-1302	Renumber
R4-11-1302	Amend
R4-11-1303	Renumber
R4-11-1303	Amend
R4-11-1304	Renumber
R4-11-1304	Amend
R4-11-1305	Renumber
R4-11-1305	Amend
Article 14	Renumber
Article 14	New Article
R4-11-1401	Repeal
R4-11-1401	New Section
R4-11-1402	Renumber
R4-11-1402	New Section
R4-11-1403	Renumber
R4-11-1403	New Section
R4-11-1404	Renumber
R4-11-1404	New Section
R4-11-1405	Renumber
R4-11-1405	New Section
R4-11-1406	Renumber
R4-11-1406	New Section
R4-11-1407	Renumber
R4-11-1408	Renumber
R4-11-1409	Repeal
Article 15	Renumber
Article 15	Amend
R4-11-1501	New Section
R4-11-1502	New Section
R4-11-1503	New Section
R4-11-1504	New Section
Article 16	New Article
R4-11-1601	New Section

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Article 17	Renumber
Article 17	Amend
R4-11-1701	Renumber
R4-11-1701	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. § 32-1207(A)(1) and (B)(3)

Implementing statutes: A.R.S. §§ 32-1207(A)(1), 32-207(A)(1)(c), 32-1207(A)(6), 32-1207(A)(7), 32-1207(A)(8), 32-1207(B)(3)(a), 32-1207(B)(3)(b), 32-1232, 32-1233, 32-1236, 32-1237, 32-1238, 32-1239, 32-1281, 32-1284, 32-1285, 32-1286, 32-1287, 32-1288, 32-1289, 32-1291, 32-1293, 32-1294, 32-1295, 32-1296, 32-1297, 32-1297.01, 32-1297.02, 32-1297.03, 32-1297.04, 32-1297.06, and 32-1298.

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

February 4, 1999

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notices of Docket Opening for R4-11-501 through R4-11-504, R4-11-701 through R4-11-710, R4-11-1104, R4-11-1301 through R4-11-1305, and Article 14; 1 A.A.R. 250-252, March 31, 1995.

Notice of Docket Opening for R4-11-1306: 1 A.A.R. 1939, October 20, 1995.

Notice of Proposed Rulemaking for R4-11-1104: 1 A.A.R. 2394-2396, November 17, 1995.

Notice of Proposed Rulemaking for R4-11-501 through R4-11-504: 2 A.A.R. 5-9, January 5, 1996.

Notice of Docket Opening for Articles 1-12 and 14: 2 A.A.R. 1495, April 19, 1996.

Notice of Docket Opening for R4-11-401 and R4-11-405 through R4-11-408: 2 A.A.R. 4735, November 22, 1996.

Notice of Termination of Rulemaking for Articles 5 and 11: 3 A.A.R. 1413, May 30, 1997.

Notice of Docket Opening for all Articles: 3 A.A.R. 1609, June 6, 1997.

Notice of Proposed Rulemaking for all Articles: 4 A.A.R. 2336-2360, September 4, 1998.

Notice of Supplemental Proposed Rulemaking for fee rules: 4 A.A.R. 3740-3742, November 13, 1998.

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

Name: Julie Chapko, Executive Director

Address: State Board of Dental Examiners  
5060 North 19th Avenue, Suite 406  
Phoenix, Arizona 85015

Telephone: (602) 242-1492

Fax: (602) 242-1445

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

These rules reorganize the order of Board's rules so that they flow in a logical sequence. For example, all definitions of words and phrases used in the rules have been moved to Article 1, where they can be found in 1 location. The rules have then been amended to conform to current statutes and practice with regard to licensing and regulation of dentists, dental hygienists, denturists and dental assistants. The fees rules now reflect the statutory maximum amounts for licensure of a dentist, hygienist, denturist, duplicate license, and penalty fee. Pursuant to statute, the Board voted at its August 1993 and August 1997 meetings to raise fees to the amount allowed by law. As required by the Administrative Procedures Act, the Board has added rules that set forth the time-frames for the application process for all of the licenses, certifications, and permits that it issues. The Board also added rules pertaining to dispensing drugs as required by statute. Other new rules include those regarding the complaint and investigation process, disciplinary action, and the mediation process. These put licensees and the public on notice of what the Board's procedures are for handling complaints, its investigation process, and potential disciplinary actions. The mediation rule codifies the procedure that the Board has successfully been using to effectively and efficiently handle certain types of complaints.

The Governor's Regulatory Review Council suggested that the Board amend the language of R4-11-102 and R4-11-103 (now renumbered to R4-11-202 and R4-11-203), during the Board's 1996 five-year review. At this time, however, the Board is not amending that language because it would require months of meetings with all interested parties, and a thorough analysis of various educational programs. In addition to the time involved, school approval is a rather hotly contested issue that requires careful analysis. The Board intends to open another rulemaking docket to amend these rules after it has had the opportunity to include all interested parties in this endeavor.

**7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying the study, any analysis of the study and other supporting material:**

None.

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

Not applicable.

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

There is no economic, small business, and consumer impact or minimal (less than \$1,000.00) impact for most of the rules. The only rule that may have a moderate impact (between \$1,000.00 and \$10,000.00) is the mediation rule, wherein the board may hire a contract mediator to resolve complaints against licensees. Although this involves a moderate impact, it is far more economical than having complaints proceed through the lengthy legal process, rather than resolving them efficiently and effectively by using a mediator.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

- Grammatical and stylistic changes were made for clarity. Punctuation changes also were made.
- The format of the rules was changed so that all repealed rules are reflected in the correct article number, based on the new article number. Therefore, the articles and sections stay in numerical order.
- Initial capitals were added to section titles.
- Text for rules where the Board is not making any changes was added, rather than stating, "No change".
- The definition of "Closed subgingival curettage" was slightly amended for clarity.
- In the definition of "Direct supervision", the phrase "principal services" was changed to "dental procedures".
- A definition of "Restricted permit holder" was added.
- In R4-11-301(A)(9) and (B)(1), "dental hygiene and dental technology school" was added. It was an oversight to have left these 2 schools out in the proposed draft.
- In the time-frame rules, the addition was corrected to add 10 days to the administrative completeness review and overall time-frame.
- The specific application requirements for a restricted permit holder in R4-11-901 were added.
- Definitions of "Fully retired" and "Permanently disabled" were moved to Article 1 from R4-11-903 to be in proper definitional form. And the text regarding a fully retired or permanently disabled licensee or certificate holder who is contributing services to a recognized charitable institution was added to new section R4-11-906.
- In R4-11-1301, the language regarding 1 calendar year of training was clarified to be a full credit load according to the training program's definition of a full credit load.
- In R4-11-1405(A)(3), the phrase "on each prescription order and label" was added to clarify where the name of the manufacturer or distributor of a drug or device shall be recorded. Also, in R4-11-1402(B), the first sentence was expanded to "... , and include the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."
- The word "hearings" was deleted from the Article 17 title because this rule only deals with rehearings. Hearings are covered by statute.
- The language in R4-11-1701(A) was amended to refer to A.R.S. Title 41, Chapter 6, Article 10 for the rehearing deadline.

11. A summary of the principal comments and the agency response to them:

There were no written comments. The 1 oral comment was from Greg McFarland, Executive Director, Arizona State Dental Association. Mr. McFarland commented that these rules clarify what is proper conduct. He also stated that the Association supports the rules and various groups representing licensees were involved with the rule making process.

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

None.

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

None.

14. Was this rule previously adopted as an emergency rule? If so, please indicate the Register citation:

This rule was not adopted as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

ARTICLE 1.2. RECOGNITION OF DENTAL SCHOOLS

Section	
R4-11-101.	Definitions
R4-11-104.	Acceptance of graduates
R4-11-105.	List of currently recognized schools

R4-11-101.	R4-11-201.	Recognized school defined	School
R4-11-202.		Subject material of written examination	
R4-11-102.	R4-11-202.	Requirements for recognition	Recognition of dental Dental and dental auxiliary schools Den-

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**ARTICLE 1. DEFINITIONS**

**R4-11-101. Definitions**

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

1. "Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N<sub>2</sub>O) and oxygen (O<sub>2</sub>) with or without local anesthesia.
2. "Application" means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.
3. "Calculus" means a hard mineralized deposit attached to the teeth.

4. "Certificate holder" means a denturist who practices denture technology pursuant to A.R.S. Title 32, Chapter 11, Article 5.
5. "Clinical evaluation" means a dental examination of the patient named in a complaint regarding the dental condition as it exists at the time the examination is performed.
6. "Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.
7. "Conscious sedation" means the use of pharmacologic or non-pharmacologic methods, or a combination of the 2 methods which results in minimal depression of the level of consciousness and allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
8. "Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).
9. "Credit hour" means 1 clock hour of participation in a recognized continuing dental education program.
10. "Deep sedation" has the same meaning as "semi-conscious sedation".
11. "Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(6).
12. "Designee" means a person to whom the Board has delegated authority to act on the Board's behalf regarding a particular task specified by this Chapter.
13. "Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.
14. "Direct supervision" means, for purposes of Article 13 only, that a licensed dentist is physically present in the operatory and actually performing dental procedures.
15. "Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.
16. "Documentation of attendance" means a document which contains the following information:
  - a. Name of sponsoring entity;
  - b. Course title and synopsis;
  - c. Number of credit hours;
  - d. Name of speaker;
  - e. Date, time, and location of the course; and
  - f. Signature of person authorized to verify registration.
17. "Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.
18. "Ex-parte communication" means any written or oral communication between the decision maker, fact finder, or any Board member and 1 party to the proceeding, in the absence of other parties.
19. "Fully retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.
20. "General anesthesia" means the use of any drug, element, or any other material which results in the elimination of sensations, accompanied by a state of unconsciousness.
21. "General supervision" means, for purposes of Article 7 only, the licensed dentist is available for consultation.

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- whether or not the dentist is in the office, regarding procedures or treatment which the dentist has authorized and for which the dentist remains responsible.
22. "Homebound patient" means a person who is unable to receive dental care in the dental office as a result of a medically diagnosed disabling physical or mental condition.
23. "Informal interview" means the proceeding conducted under A.R.S. § 32-1263.02, during which a Board member, acting as an informal interviewing officer, and other investigators, hear testimony from the complainant, licensee, or certificate holder, and any witnesses, and receive and review evidence relating to the complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.
24. "Intravenous or intramuscular sedation" means the parenteral use of any drug, element, or material to produce general anesthesia, semi-conscious sedation, or conscious sedation.
25. "Investigative interview" means a proceeding conducted under A.R.S. § 32-1263.02, during which an investigator or investigative panel hears testimony from the complainant, licensee, or certificate holder, and any witnesses, and receives and reviews evidence relating to the complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.
26. "Irreversible procedure" means a single treatment, or a step in a series of treatments, which causes change in the affected hard or soft tissues and is permanent or requires reconstructive or corrective procedures.
27. "Jurisdiction" means the Board's power to investigate and rule on complaints which allege grounds for disciplinary action under A.R.S. Title 32, Chapter II or the rules in this Chapter.
28. "Lay person" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.
29. "Licensee" means a dentist, dental hygienist, or person who holds a restricted permit pursuant to A.R.S. § 32-1237.
30. "Local anesthesia" means the elimination of sensations, such as pain, in 1 part of the body by the injection of an anesthetic drug.
31. "Nitrous oxide analgesia" means the use of nitrous oxide  $N_2O/O_2$  as an inhalation analgesic.
32. "Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.
33. "Nurse anesthetist" means a licensed nurse with special training in all phases of anesthesia.
34. "Oral or rectal conscious sedation" means the oral or rectal use of any drug, element, or material to produce conscious sedation.
35. "Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.
36. "Periodontal pocket" means a pathologic fissure bordered on 1 side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.
37. "Permanently disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a physician's order because of a medical reason.
38. "Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.
39. "Prescription-only device" means:
- a. Any device that is limited by the federal act, as defined in A.R.S. § 32-1901(31), restricted to use only under the supervision of a medical practitioner; or
  - b. Any device required by the federal act, as defined in A.R.S. § 32-1901(31), to bear on its label the legend, "Caution: federal law prohibits dispensing without prescription".
40. "Prescription-only drug" means:
- a. A drug which, because of its toxicity or other potential for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use, except by or under the supervision of a medical practitioner;
  - b. Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;
  - c. Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
  - d. Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "Caution: federal law prohibits dispensing without prescription."
41. "President's designee" means the Board's executive director, an investigator, or another Board member.
42. "Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.
43. "Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.
44. "Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment provided by a recognized dental school as defined in A.R.S. § 32-1201(15), recognized dental hygiene school as defined in A.R.S. § 32-1201(14), or recognized school of denture technology as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental, dental hygiene, or denturist association, dental, dental hygiene, or denturist study club, governmental agency, or commercial dental supplier.
45. "Representative" means, for purposes of Article 15 only, a person recognized by the Board as authorized to act on behalf of a complainant or a party in proceedings governed by this Chapter.
46. "Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 and is issued a restricted permit by the Board.
47. "Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

- 48. "Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.
- 49. "Section 1301 permit" means a permit to administer general anesthesia and semi-conscious sedation, pursuant to Article 13.
- 50. "Section 1302 permit" means a permit to administer conscious sedation, pursuant to Article 13.
- 51. "Semi-conscious sedation" means use of pharmacologic or non-pharmacologic methods, or a combination of the 2 methods, to induce a state of depressed consciousness accompanied by partial loss of protective reflexes, and the inability to continually maintain an airway independently or respond appropriately to physical stimulation or verbal command.
- 52. "Specialist" means, for purposes of Article 15 only, a licensee whose practice is limited to 1 of the following 8 specialty categories recognized by the American Dental Association: endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.
- 53. "Study Club" means a group of at least 5 Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.
- 54. "Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

**R4-11-104. Acceptance of graduates**

- A. When a school teaching dentistry or dental auxiliary training outside the United States or Canada is recognized by the Board based upon foregoing requirements, only that year's graduates and future graduates will qualify for examination. Recognition of a school will not mean all past graduates qualify.
- B. Past graduates of schools outside the United States or Canada not previously recognized by the Arizona Board of Dental Examiners must still qualify for licensure examination after the time of that school's recognition under provisions of rule R4-11-211.
- C. Current and future graduates may also qualify for licensure examination under provisions of rule R4-11-211.

**R4-11-105. List of currently recognized schools**

A list of all dental schools and dental hygiene schools currently recognized by the Arizona State Board of Dental Examiners is incorporated herein by reference and made a part hereof as if fully set forth.

**ARTICLE 1, 2. RECOGNITION OF DENTAL SCHOOLS**

**R4-11-101. R4-11-201. Recognized school defined School**

The Board shall recognize all dental and dental auxiliary schools which meet the minimal educational, facility, faculty and administrative requirements as set forth in rule R4-11-102 in this Article, and the burden of satisfying these requirements shall rest with the The school under consideration or the person who is applying for recognition of a school shall satisfy the requirements in this Article.

**R4-11-202. Subject material of written examination**

The written examination shall be on such subjects as the Board may, from time to time, select from the curricula of recognized dental and dental hygiene schools. A list of such subjects shall be on file with the secretary of the Board at least 30 days before such

written examination and shall be open to inspection by any applicant.

**R4-11-102. R4-11-202. Requirements for recognition of dental and dental auxiliary schools Recognition of Dental and Dental Auxiliary Schools**

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.

**R4-11-103. R4-11-203. Site visits Visits for evaluation of educational program Evaluating Educational Program**

- A. A proper evaluation of To evaluate an educational program based upon requirements listed in R4-11-102 must pursuant to this Article, the Board shall include a visit to the facility applying for recognition in Arizona. It will be the responsibility of the The institution or the individual person applying on behalf of the institution for school recognition of the school, to provide a means for the Arizona Board of Dental Examiners shall pay for the Board, or its representatives, to visit the facility in question for the purpose of properly evaluation the program in dental education toward qualifying graduates to take the Arizona Dental Licensure Examination.
- B. No change.
- C. No change.

**R4-11-204. Theoretical written examination**

- A. The theory examination will be composed of seven sections. The applicant must receive a passing grade on all seven sections to have successfully completed this portion of the examination.
- B. If the applicant has failed no more than three sections of the theory examination, he or she may make arrangements to retake the individual portions failed.
- C. If the applicant has failed more than three sections of the theory examination, he or she may make arrangements to retake the full theory examination.
- D. No applicant may retake portions or the full theory examination more than two times until meeting requirements of subsection (E).
- E. If the applicant does not successfully complete the theory exam, within the three times allowed, that applicant must take an academic refresher course approved by the Board to be eligible for retake of the full theory examination.

**R4-11-205. Scoring values of written examination**

The Board shall have the right to assess whatever number of points to each particular question as it deems advisable but shall, whenever questions are not of equal value, advise the applicant.

**R4-11-206. Conduct of written examination**

All examinations shall be given in a manner as determined by the Board. Handwriting of candidates must be legible. All questions must be returned to the Board with each examination paper. Written examinations outside of the clinical examination, will consist of theory for dentists, theory for hygienists, jurisprudence for dentists, and jurisprudence for hygienists. Applicants holding valid certificates of the national Board of Dental Examiners may be exempt from the theory portion of the written tests pursuant to rule R4-11-208.

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**R4-11-207. Conduct of clinical examination**

The clinical examination required for dental or dental hygiene licensure shall be that administered by the Western Regional Examining Board.

**R4-11-208. Acceptance of national board certificate**

The Board will accept an applicant's certificate of the National Board of Examiners for exemption from the written theory portion of the Arizona State Board of Dental Examiners licensure examination.

**R4-11-209. Examination fee—dentist**

The examination fee shall be \$50.00 for examination for licensure in dentistry and shall be payable by certified check, money order or cashiers check only and shall accompany the application for dental license.

**R4-11-210. Examination fee, dental hygienist**

The examination fee shall be \$25.00 for examination for licensure in dental hygiene and shall be payable by cashiers check, certified check or money order only and shall accompany the application for dental hygiene license.

**R4-11-211. Qualifications for examination of graduates of non-recognized dental schools**

A graduate of a school of dentistry or dental hygiene not recognized by the Arizona State Board of Dental Examiners may, through his or her own individual efforts, qualify the school from which the applicant graduated for recognition by the Board for purposes of the examination for licensure. Successful completion of the following requirements by the applicant will qualify the school for recognition only for that applicant and none other may qualify for the licensure examination under the recognition of the school achieved by that applicant.

1. The applicant must be legally entitled to permanently reside within the United States and must be a graduate of a dental teaching institution listed in the World Director of Dental Health, World Health Organization, with certified transcripts of such training (including documented English translation of the original) showing completion of not less than six academic years of post-secondary study culminating in the degree of Doctor of Dentistry or its equivalent from that school of study and must have sufficient command of the English language to engage in the testing procedures of the Arizona Board of Dental Examiners.
2. The applicant must show proof of having been licensed in the country in which he went to school, unless he is a citizen of the United States attending a foreign school.
3. The applicant must have successfully completed parts 1 and 2 of the examination given by the United States National Board of Dental Examiners within the last five years prior to licensure exam and hold a certificate issued to the applicant showing that successful completion.
4. The applicant must have successfully completed all phases of the pre-clinical examination given by the Arizona State Board of Dental Examiners before being considered qualified for Arizona's Dental Licensure Examination.
5. If the applicant is successful on all portions of the pre-clinical examination, he must then complete regular application procedures to take the Arizona Examination for Dental Licensure.
6. The examination fee for the pre-clinical testing procedures is \$125.00.

**R4-11-212. Recognition of and participation in the Western Regional Examining Board**

- A. The Arizona State Board of Dental Examiners recognizes the Western Regional Examining Board, hereinafter designated W.R.E.B., a corporation whose initial registered office is 317 S.W. Alder, Suite 1010, Portland, Oregon, 97204, as a testing agency whose standards of clinical and theoretical dental examinations are substantially equivalent to those given in Arizona.
- B. The Arizona State Board of Dental Examiners, accepts as a participating member of the W.R.E.B. all the incumbent responsibilities and privileges of a participating membership.

**R4-11-213. Acceptance of certificate of Western Regional Examining Board**

When a Western Regional Examining Board certificate is accepted in lieu of Arizona's clinical examination, the applicant will be given the written examination pursuant to R4-11-206 and upon successful completion of that portion of the examination and any and all other requirements, the applicant will be issued a license to practice dentistry or dental hygiene.

**R4-11-214. Rules applying to hygienists**

The foregoing rules, insofar as applicable, shall apply equally to the giving of the examination for license as dental hygienist.

**R4-11-215. Examination fee—denturist**

The examination fee shall be \$125.00 for examination for certification in denture technology. The fee shall be payable by certified check or money order and shall accompany the application for examination in denture technology.

**R4-11-216. Rules applying to denturists**

Insofar as applicable, the foregoing rules shall apply equally to the giving of the examination for certification as a denturist.

**ARTICLE 2. 3. EXAMINATIONS, LICENSING  
QUALIFICATIONS, APPLICATION AND RENEWAL  
TIME-FRAMES**

**R4-11-301. Terms and conditions of reinstatement**

Persons desiring reinstatement of a revoked license must apply through ordinary licensing methods and such application shall have attached thereto, substantial evidence that the reinstatement of license will no longer constitute a threat to the public health and safety.

**R4-11-201, R4-11-301 Application requirements**

- A. The examination fee as set forth in rules R4-11-209 and R4-11-210, a sworn statement of the applicant's qualifications on an application blank provided by the Board, along with a copy of the diploma from the applicant's dental or dental hygiene school, a copy of the certificate from the Western Regional Examining Board and a copy of the applicant's results of the National Board examination pursuant to rule R4-11-208, must be in the hands of the secretary before a license may be issued.  
An applicant shall provide the following information and documentation on a form provided by the Board:
  1. A sworn statement of the applicant's qualifications;
  2. A photograph of the applicant that is no more than 6 months old;
  3. An official, sealed transcript sent directly from the applicant's dental, dental hygiene, or denture technology school to the Board;
  4. A copy of the certificate from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination

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within the 5 years immediately preceding the date the application was filed with the Board;

5. An official score card sent directly from the National Board examination to the Board;
6. A copy of the applicant's cardiopulmonary resuscitation certification, indicating the expiration date;
7. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
8. A copy of the self-inquiry from the National Practitioner Data Bank that is no more than 6 months old;
9. A letter of endorsement from the dental, dental hygiene, or dental technology school from which the applicant graduated if the applicant is a new graduate or has been practicing less than 6 months;
10. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government; and
11. The jurisprudence examination fee.

**B. The Board may request that an applicant provide:**

1. An official copy of the applicant's dental, dental hygiene, or dental technology school diploma;
2. A copy of a certified document which indicates the reason for a name change if the applicant's application contains different names;
3. Written verification of the applicant's work history; and
4. A copy of a high school diploma or equivalent certificate.

**B.C.** Pursuant to rule R4-11-206, the applicant must also have successfully completed the Arizona jurisprudence examination and in the event the applicant does not have a certificate of the National Board, must have successfully completed the Arizona theory examination before a license may be issued. An applicant shall pass the Arizona jurisprudence examination.

**~~R4-11-302. Criteria for determination of application for reinstatement~~**

~~The Board shall make such determination of each application as it deems consistent with the public health and safety and just in these premises.~~

**~~R4-11-303. R4-11-302. Determination of successful completion of licensure examination Successful Completion of Licensure Examination~~**

~~The following may be used to determine the minimum passing grade in all examinations conducted by the Arizona State Board of Dental Examiners:~~

1. ~~The Board may utilize a percentage system of grading in which case require a composite average of 75% must be obtained for successful completion of the examination; or~~
2. ~~The Board may utilize an overall proficiency evaluation to determine successful completion of the examination. In this instance a zero (0) to six (6) use a performance rating will be used of 0 to 6 to evaluate each procedure performed and an accumulation of require a specific point total shall be required to achieve successful completion.~~
3. ~~The Board shall by recorded vote, no later than at least 30 days prior to before the examination, to determine which scoring system is to be used. In the instance of For the percentage system the Board shall also determine the relative values of the individual procedures tested. In the instance of For the proficiency evaluation the Board will shall determine the minimum point total required to successfully complete the examination.~~

**~~R4-11-303. Criteria for determination of application~~**

~~The Board shall make such determination of each application as it deems consistent with the public health and safety and just in these premises.~~

**~~R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Denturist Certificates, and Dispensing Registrations~~**

- A. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, denturist certificate, or dispensing registration, the Board shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
- C. Upon receipt of all missing information, the Board shall notify the applicant, in writing, within 10 calendar days, that the application is complete.
- D. The Board shall not process an application until the applicant has fully complied with the requirements of this Article.
- E. The Board shall notify an applicant, in writing, whether an initial license or renewal governed by this Section is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
- F. The Board may deny a license or renewal governed by this Section for any of the reasons stated in A.R.S. Title 32, Chapter 11, or if the applicant:
  1. Fails to provide complete documentation;
  2. Provides false or misleading information; or
  3. Fails to meet the requirements of A.R.S. Title 32, Chapter 11, or this Chapter.
- G. The notice of denial shall inform the applicant of the following:
  1. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
  2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
  3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  4. The name and telephone number of an agency contact person who can answer questions regarding the application process.
- H. The following time-frames apply for an initial or renewal application governed by this Section:
  1. Administrative completeness review time-frame: 24 calendar days.
  2. Substantive review time-frame: 90 calendar days.
  3. Overall time-frame: 114 calendar days.
- J. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

**~~R4-11-304. Limitation on right of reinstatement~~**

~~If a license has not been reinstated within five years from the date of revocation, the applicant shall be subject to re-examination in order to obtain a license (adopted 12-11-64) (amended 2-17-69).~~

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**R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates**

- A.** Within 14 calendar days of receiving an application from an applicant for a dental assistant certificate, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
- C.** Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.
- D.** The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.
- E.** The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
- F.** The Board or its designee shall deny certification if an applicant fails the clinical or written portions of the Dental Assistant National Board examination.
- G.** The notice of denial shall inform the applicant of the following:
  - 1.** The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
  - 2.** The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
  - 3.** The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  - 4.** The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.
- H.** The following time-frames apply for certificate applications governed by this Section:
  - 1.** Administrative completeness review time-frame: 24 calendar days.
  - 2.** Substantive review time-frame: 90 calendar days.
  - 3.** Overall time-frame: 114 calendar days.
- J.** An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

**R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Semi-Conscious Sedation Permits, and Conscious Sedation Permits**

- A.** Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and semi-conscious sedation permit or a conscious sedation permit, the Board shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
- C.** Upon receipt of all missing information, the Board shall notify the applicant, in writing, within 10 calendar days, that the application is complete.

- D.** The Board shall not process an application until the applicant has fully complied with the requirements of this Article.
- E.** The Board shall notify an applicant, in writing, whether the initial permit or renewal governed by this Section is granted or denied, no later than 120 calendar days after the date of the notice advising the applicant that the package is complete.
- F.** The Board may deny a permit or renewal governed by this Section for any of the reasons stated in A.R.S. Title 32, Chapter 11, or if the applicant:
  - 1.** Fails to provide complete documentation;
  - 2.** Provides false or misleading information; or
  - 3.** Fails to meet the requirements of A.R.S. Title 32, Chapter 11 or this Chapter.
- G.** The notice of denial shall inform the applicant of the following:
  - 1.** Each reason for the denial, with citations to the statutes or rules on which the denial is based;
  - 2.** The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
  - 3.** The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  - 4.** The name and telephone number of an agency contact person who can answer questions regarding the application process.
- H.** The following time-frames apply for an initial or renewal application governed by this Section:
  - 1.** Administrative completeness review time-frame: 24 calendar days.
  - 2.** Substantive review time-frame: 120 calendar days.
  - 3.** Overall time-frame: 144 calendar days.

**ARTICLE 9, 4, FEES**

**R4-11-401. Definitions**

- A.** Word definitions in this Article, unless the context otherwise requires:
  - 1.** "Calculus" means a hard mineralized deposit attached to the teeth.
  - 2.** "Epithelial attachment" means the layer of cells that extends downward from the bottom of the gingival (gum) sulcus (crevice) along the tooth and attaches to it.
  - 3.** "Homebound patient" means a person who is unable to receive dental care in the dental office as a result of a medically diagnosed disabling physical or mental condition.
  - 4.** "Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited at its apex by the epithelial attachment.
  - 5.** "Plaque" means a film-like sticky substance composed of mucoid secretions containing bacteria and their toxic products, dead tissue cells, and debris.
  - 6.** "Preventive and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues in such a way as to prevent or treat oral disease.
- B.** Procedures definitions. In this Article, unless the context otherwise requires:
  - 1.** "Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a non-flap situation.
  - 2.** "Irreversible procedure" means a single treatment or part of a multistep series of treatments which causes changes in the affected hard or soft tissues that are either

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permanent or require reconstructive or corrective procedures.

3. "Local anesthesia" means the elimination of sensations, especially pain, in one part of the body by the injection of an anesthetic drug.
4. "Nitrous oxide analgesia" means the use of nitrous oxide  $N_2O/O_2$  as an inhalation analgesic.
5. "Nonsurgical periodontal treatment" means plaque removal, plaque control, supra-, and subgingival scaling, root planing, and the adjunctive use of chemical agents.
6. "Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.
7. "Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.
8. "Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.
9. "Sealing" means instrumentation of the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

**R4-11-901. R4-11-401. Triennial registration fees — dentist**  
**Registration Fees: Dentist**

Pursuant to A.R.S. § 32-1236, the triennial registration fee for dentists shall be \$360.00. The triennial registration fee for dentists is \$450.00.

**R4-11-902. R4-11-402. Triennial registration fees — hygienist**  
**Registration Fees: Hygienist**

Pursuant to A.R.S. § 32-1287, the triennial registration fee for hygienists shall be \$180.00. The triennial registration fee for hygienists is \$225.00.

**R4-11-903. R4-11-403. Triennial registration fees — retired or disabled licensees and certificate holders**  
**Registration Fees: Retired or Disabled Licensees and Certificate Holders**

- A. Pursuant to A.R.S. §§ 32-1236, 32-1287, and 32-1297-06, the The triennial registration fee for fully retired or permanently disabled licensees or certificate holders shall be is \$15.00.
- B. The term fully retired means those persons who have reached the age of 65 years and who have totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.
- C. The term permanently disabled means those persons who because of medical reasons and under doctor's orders have totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.
- D. A person classified as fully retired or permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes.

**R4-11-904. R4-11-404. Penalty fees Fees**

Should a licensee fail to pay the annual registration fee on or before June 30, there shall be a penalty fee assessed in the amount of \$25.00. The penalty fee for a licensee who does not pay the triennial registration fee on or before June 30 is \$25.00.

**R4-11-905. R4-11-405. Duplicate license — duplicate registration receipt**  
**License, Duplicate Registration Receipt**

There shall be a fee of \$25.00 for each duplicate license and/or duplicate registration receipt. Each duplicate license or registration fee is \$25.00.

**R4-11-906. R4-11-406. Triennial registration fees — dentist**  
**Registration Fees: Denturist**

Pursuant to A.R.S. § 32-1297-06, the triennial registration fee for denturists shall be \$210.00. The triennial registration fee for denturists is \$225.00.

**R4-11-909. R4-11-407. Fees for Anesthesia and Sedation Permits**

- A. Pursuant to A.R.S. § 32-1207(D), the application fee for a Section 802 1301 permit to administer general anesthesia and semi-conscious sedation or a Section 803 1302 permit to administer conscious sedation shall be is \$300.
- B. Upon successful completion of the initial on-site evaluation and upon receipt of appropriate fees the required permit fee, as defined in R4-11-909(A), the dentist shall be issued the Board shall issue a separate Section 802 or 803 1301 or 1302 permit to a dentist with an expiration date which falls into the existing anesthesia permit triennial period for each location requested by the dentist. A permit expires on December 31 of every 3rd year.
- C. The renewal fee for each Section 802 or 803 1301 or 1302 permit shall be is \$300 per doctor dentist, per location.

**ARTICLE 11. 5. REGULATION OF DENTISTS**

**R4-11-501. Definitions**

- A. "Dental assistant" means any person who acts as a assistant to a dentist in rendering personal services to a patient involving close physical proximity to the patient while under treatment, undergoing diagnostic procedures, or under observation.
- B. "Direct supervision and control" means that a licensed dentist must be physically present in the operatory and actually performing principal services.
- C. "Personal supervision" means the dentist must be present in the office and must see the patient and assign the work to be done. The dentist is available to check the work as it progresses and must approve the completed work.

**R4-11-1102. R4-11-501. Dentist of record**  
**Record**

- A. Each A dentist shall ensure that each patient record card that maintains has the treatment records for any a patient treated in any dental office, clinic, hospital dental clinic, or charitable institution dental clinic, and shall have displayed on it, permanently and in a prominent manner, the full name of a dentist in that the office, clinic, hospital dental clinic or charitable dental clinic who shall assume responsibility is responsible for all of the patient's treatment of that patient in accordance with the treatment plan to which the patient concurred.
- B. Any deviations from that treatment plan shall be under the authority and responsibility of the dentist of record and it shall be that dentist's responsibility to obtain from the patient acceptance of that deviation and resultant costs. A dentist of record shall obtain a patient's consent to change the treatment plan that the patient originally agreed to and incur additional costs.
- C. Should the A dentist of record leave who leaves the practice of dentistry, or leave the employ of the a practice in which he is the dentist is the dentist of record on specific patient records, shall ensure that a new dentist of record must be immediately is entered on the each patient record card by whoever has control or authority over those patient record cards.
- D. Being replaced as a dentist of record in no way absolves the dentist of responsibility over that portion of care which he performed or for which he was responsible as dentist of

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record. A dentist of record remains responsible for the care given to the patient while the dentist was the dentist of record even after being replaced by another dentist.

- E. The A dentist of record shall remain responsible for the care of the a patient during the course of treatment and shall be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist. Lack of availability to the patient on an emergency basis shall constitute constitutes abandonment, and the dentist shall be is subject to disciplinary action under unprofessional conduct as defined in A.R.S. § 32-1201.10 for such unprofessional conduct pursuant to A.R.S. Title 32, Chapter 11, Article 3.

**R4-11-503. Radiographic duties**

A dental assistant may expose radiographs for dental diagnostic purposes, only under the personal supervision of the dentist and after completing a course in radiography or passing a challenge exam approved by the Arizona State Board of Dental Examiners. Enforcement shall commence one year from adoption.

**ARTICLE 4.6. REGULATION OF DENTAL HYGIENISTS**

**R4-11-601. Definitions**

"Dental technician" means any person, other than a licensed dentist, who fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects (both developmental or acquired), disorders or deficiencies of the human oral cavity, teeth, investing tissue, maxilla or mandible, or adjacent associated structures.

**R4-11-402. R4-11-601. Duties of a Dental Hygienist and Qualifications**

- A. A dental hygienist may apply preventative and therapeutic agents under the general supervision, as defined in A.R.S. § 32-1281(H)(2), of a licensed dentist.
- B. A dental hygienist may perform other procedures a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist; and
  2. The hygienist has received instruction, training, and/or or education necessary to perform such the procedure in a safe manner; and
  3. The procedure is performed under the general supervision, as defined in A.R.S. § 32-1281(H)(2), of a licensed dentist.
- C. For purposes of qualification of The Board shall ensure that a dental hygienist is qualified to perform administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), the Board recognizes by requiring evidence that the hygienist has completed courses in techniques taught in at a recognized dental hygiene school and or recognized dental school, as defined in A.R.S. § 32-1201(14) and (15), which require current cardiopulmonary resuscitation certification as a prerequisite, and which consist of a minimum of 36 clock hours of instruction, and successful completion of those examinations of has passed examinations in theoretical knowledge and clinical competency in the following subject areas:
1. Review of head and neck anatomy;
  2. Pharmacology of anesthetic and analgesic agents;
  3. Medical - dental history considerations;
  4. Emergency procedures;
  5. Selection of appropriate armamentarium and agents;
  6. Nitrous oxide administration;
  7. Clinical practice, under the direct supervision, as defined in A.R.S. § 32-1281(H)(1), of a licensed dentist, which includes a minimum of three including at least 3

experiences in the administration of administering each of the following:

- a. Posterior superior alveolar injection,
  - b. Middle superior alveolar injection,
  - c. Anterior superior alveolar injection,
  - d. Nasopalatine injection,
  - e. Greater - palatine injection,
  - f. Inferior alveolar nerve injection,
  - g. Lingual injection,
  - h. Mental injection,
  - i. Long buccal injections, and
  - j. Nitrous oxide analgesia.
- D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.
- E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(14) and (15), which consist of a minimum of 200 clock hours of instruction and successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:
1. A review of oral histology,
  2. Inflammation and pathogenesis of a periodontal pocket,
  3. Patient assessment,
  4. Dental hygiene treatment planning,
  5. Advanced root planing and debridement,
  6. Subgingival curettage,
  7. Suturing,
  8. Wound repair and new attachment, and
  9. Clinical experience in each of the following:
    - a. Root planing,
    - b. Subgingival curettage,
    - c. Suturing.
- F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist's license.
- G. Dental hygienists are prohibited from performing any shall not perform an irreversible procedure.

**R4-11-403. R4-11-602. Care of Homebound Patients**

Dental hygienists treating homebound patients shall provide only such treatment prescribed by the dentist of record in the diagnosis and treatment plan established by the dentist of record. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months prior to before the treatment is administered administration of such treatment.

**R4-11-408. R4-11-603. Limitation on Number Supervised**

No more than three dental hygienists may perform their professional duties under a dentist's supervision at any one time. A dentist shall not supervise more than 3 dental hygienists at a time.

**R4-11-604. Selection Committee and Process**

- A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of 3 members. The Board shall appoint at least 2 members who are dental hygienists and 1 member

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who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

- B.** Each selection committee member's term is 1 year.
- C.** By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least 1 alternate.

**R4-11-605. Dental Hygiene Committee**

- A.** The Board shall appoint 7 members to the dental hygiene committee as follows:
  - 1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a 1 year term;
  - 2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a 1 year term;
  - 3. Four dental hygienists that possess the qualifications required in Article 6; and
  - 4. One lay person.
- B.** Except for members appointed as prescribed in subsections (A)(1) and (A)(2), the Board shall appoint dental hygiene committee members for staggered terms of 3 years, beginning January 1, 1999, and limit each member to 2 consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.
- C.** The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

**R4-11-606. Candidate Qualifications and Submissions**

- A.** A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.
- B.** A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.
- C.** The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
  - 1. Geographic representation.
  - 2. Experience in post-secondary curriculum analysis and course development.
  - 3. Public health experience, and
  - 4. Dental hygiene clinical experience.

**R4-11-607 Duties of the Dental Hygiene Committee**

- A.** The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
- B.** In performing the duty in subsection (A), the committee may:
  - 1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
  - 2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
  - 3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
  - 4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;

- 5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
  - 6. Provide ad hoc committees to the Board upon request;
  - 7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
  - 8. Make recommendations to the Board for approval of dental hygiene consultants.
- C.** Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.
  - D.** The committee shall meet at least 2 times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
  - E.** The Board may assign additional duties to the committee.

**R4-11-608. Dental Hygiene Consultants**

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

- 1. Act as Western Regional Examining Board (WREB) examiners for the clinical portion of the dental hygiene examination;
- 2. Act as Western Regional Examining Board (WREB) examiners for the local anesthesia portion of the dental hygiene examination;
- 3. Participate in Board-related procedures, including clinical evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
- 4. Participate in on-site office evaluations for infection control, as part of a team.

**ARTICLE 5. 7. REGULATION OF DENTAL ASSISTANTS**

**R4-11-502, R4-11-701. Duties of a dental assistant under supervision Procedures and Functions Performed by a Dental Assistant under Supervision**

- A.** A dental assistant may do and perform the following acts and duties procedures and functions under the direct supervision and control of a licensed dentist, which licensed dentist shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of said acts and duties:
  - 1. Retract a patient's cheek, tongue, or other parts of tissues during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created and accumulated during or after dental procedures by the dentist by use of vacuum devices, compressed air, mouthwashes, and water; provide any assistance, including the placement of material in a patient's oral cavity in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation and who is then actually in a position to give direct supervision to the rendition of such assistance.
  - 1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
  - 2. Cleanse the supragingival surface of the tooth in preparation for:
    - a. The placement of bands, crowns, and restorations;
    - b. Dental dam application;
    - c. Acid etch procedures; and
    - d. Removal of dressings and packs;

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3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.

**B.** A dental assistant may ~~do and~~ perform the following acts and duties ~~procedures and functions~~ under the personal ~~general~~ supervision of a licensed dentist and the direct supervision and control of a licensed dental hygienist. The licensed dentist shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of said acts and duties:

1. ~~Retract a patient's cheek, tongue, or other parts of tissues during a dental operation; remove such debris as is normally created and accumulated during the course of treatment being rendered by a licensed dental hygienist during or after operative procedures by the hygienist by the use of vacuum devices, compressed air, mouth washes, and water; provide any assistance to a licensed dental hygienist who is then and there actually in a position to give direct supervision to the rendition of such assistance.~~
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

**C.** Under personal supervision the dental assistant may:

1. ~~With proper instruction from a dentist or hygienist, train or instruct patients in techniques of oral hygiene, preventive procedures, dietary counseling for caries and plaque control, pre and post-operative instructions relative to specific office treatments that have been or are to be performed.~~
2. ~~Apply fluorides under the personal supervision and direction of a dentist or dental hygienist. A dental assistant may not perform any of the prophylaxis procedures.~~

**R4-11-702. Scope**

On a motion for a new hearing, the Board may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions, and direct the entry of a new judgment.

**R4-11-504. R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision**

Dental assistants are expressly prohibited from performing the duties A dental assistant shall not perform the following procedures or functions:

1. ~~Performance of duties of dental hygienists except that the assistant may remove excess cement from inlays, crowns, bridges and orthodontic appliances; A proce-~~

~~dures which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;~~

2. ~~The administration of nitrous oxide and oxygen analgesia without the dentist present in the operatory;~~
  - a. ~~Administration as used in this context shall mean the initial introduction of nitrous oxide and oxygen to the patient to an established safe plane of analgesia. Remaining procedures shall be conducted under personal supervision.~~
- 3-2. ~~Placement, adjustment, or intraoral carving~~ Intraoral carvings of dental restorations or prostheses;
- 4-3. Final jaw registrations;
- 5-4. Taking final impressions for any activating orthodontic appliance, permanent fixed or removable prosthesis or tooth restoration;
- 6-5. ~~Activate~~ Activating orthodontic appliances; or
7. ~~Adjusting any orthodontic activating appliance or fixed or removable prosthesis;~~
8. ~~The performance of any procedure considered irreversible. The Board of Dental Examiners shall be the sole determiner of what constitutes an irreversible procedure based upon generally accepted definitions currently in effect.~~
6. An irreversible procedure.

**R4-11-703. Contents of motion; amendment; rulings reviewable**

- A.** ~~The motion for a new hearing shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the Board.~~
- B.** ~~Upon the general ground that the Board erred in admitting or rejecting evidence, the Board shall review all rulings during the hearing upon objections to evidence.~~
- C.** ~~Upon the general ground that the decision, findings of fact, or judgment is not justified by the evidence, the Board will review the sufficiency of the evidence.~~

**R4-11-704. Time for motion**

~~A motion for new hearing shall be served not later than ten days after the entry of the judgment, except that a motion for new hearing on the ground of newly discovered evidence may be made after the expiration of such period and before expiration of time for appeal, with leave of Board.~~

**R4-11-705. Time for determination of motion**

~~Motions for new hearing shall be determined within 20 days after rendition of judgment, and if not so determined shall be deemed denied, unless continued by Board order or stipulation.~~

**R4-11-706. Time for serving affidavits**

~~When a motion for a new hearing is based upon affidavits, they shall be served with the motion. The opposing party has ten days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Board for good cause shown or by the parties by written stipulation. The Board may permit reply affidavits.~~

**R4-11-707. On initiative of Board**

~~Not later than ten days after entry of judgment the Board of its own initiative may order a new hearing for any reason for which it might have granted a new hearing on motion of a party, and in the order shall specify the grounds therefor.~~

**R4-11-708. Questions to be considered in new hearing**

~~A new hearing, if granted, shall be only a new hearing on the question or questions with respect to which the decision is found erro-~~

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neous, if separable. If a new hearing is ordered because the sanction imposed is excessive or inadequate and granted solely for that reason, the decision shall be set aside only in respect of the sanctions, and shall stand in all other respects.

**R4-11-709. Number of new hearings**

Not more than two new hearings shall be granted to any party in the same action, except when the Board has been guilty of some misconduct or has erred in matters of law.

**R4-11-710. Specification of grounds of new hearing in order**

No order granting a new hearing shall be made and entered unless the order specifies with particularity the ground or grounds on which the new hearing is granted.

**ARTICLE 12. 8. REGULATION OF DENTURISTS**

**R4-11-801. Definitions**

In this Article, the following definitions apply:

1. "Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N<sub>2</sub>O) and oxygen (O<sub>2</sub>) with or without local anesthesia.
2. "Conscious sedation" means the use of pharmacologic or non-pharmacologic methods, or a combination thereof which results in the minimal depression of the level of consciousness which maintains the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.
  - a. "IV/IM conscious sedation" means the parenteral use of any drug, element or material to produce conscious sedation.
  - b. "Oral or rectal conscious sedation" means the oral or rectal use of any drug, element or material to produce conscious sedation.
3. "Designee" means the individual identified by the Board, to whom the Board has delegated authority to act on its behalf in a particular task specified by these rules.
4. "Direct supervision" means that a licensed dentist must be physically present in the operatory and actually performing principal services.
5. "General anesthesia" means the use of any drug, element, or any other material which results in the elimination of sensations, accompanied by a state of unconsciousness.
6. "Nurse anesthetist" means a licensed nurse with special training in all phases of anesthesia.
7. "Semi-conscious sedation" means the use of any drug, element, or any other material which results in the relaxation, diminution, or loss of sensation, with the retention of full reflex activity, including the capability of maintaining and protecting the airway, spontaneous breathing ability with adequate ventilation, but impaired or lack of ability to respond adequately to physical stimulation or verbal command.
8. "Section 802 permit" means a permit to administer general anesthesia and semi-conscious sedation, pursuant to R4-11-802.
9. "Section 803 permit" means a permit to administer conscious sedation, pursuant to R4-11-803.

**R4-11-1201. R4-11-801. Consultants to the Board**

A. The Board of Dental Examiners shall appoint five 5 certified denturists to assist and advise the Board in matters relating to regarding complaints, disciplinary actions, and examinations concerning denturists, to disciplinary actions concerning denturists and to the giving and grading of examinations for certification as a denturist.

- B. The Board of Dental Examiners shall appoint an examining team for each denturist certification examination pursuant to A.R.S. § 32-1297.02.
- C. The examining team shall administer and grade the examination as required by A.R.S. § 32-1297.02 and shall make recommendations to the Board of Dental Examiners for certification of those who successfully completed the examination.

**R4-11-1202. R4-11-802. Recognition of schools of denture technology Schools of Denture Technology**

- A. The Board shall use the criteria for recognition of schools of Denture Technology shall be that listed in rules R4-11-101 through R4-11-103 Article 2 to determine whether to recognize a denture technology school.
- B. The basic curriculum for to recognize a program in denture technology must shall contain those courses and number of course hours delineated in A.R.S. § 32-1297(C) and should may include as well, the following subjects: partial denture techniques, cardiopulmonary resuscitation, X-ray interpretation, jurisprudence, and practice management.

**ARTICLE 10. 9. RESTRICTED PERMITS**

**R4-11-1001. R4-11-901. Application for restricted—permit Restricted Permit**

- A. An applicant for a restricted permit shall apply to the Board of Dental Examiners on a form approved by the Board and shall file a copy of his employment contract with a charitable dental clinic or organization along with the completed application form. provide the following information and documentation on a form provided by the Board:
  1. A sworn statement of the applicant's qualifications;
  2. A photograph of the applicant that is no more than 6 months old;
  3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
  4. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government;
  5. A copy of the applicant's cardiopulmonary resuscitation certification, indicating the expiration date; and
  6. A copy of the applicant's pending contract with a charitable dental clinic or organization offering dental services.
- B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

**R4-11-1002. R4-11-902. Issuance of a restricted—permit Restricted Permit**

Prior to issuance of Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239, the Board must recognize and approve the charitable dental clinic or organization by whom the applicant is to be employed. In determining whether to recognize and approve such charitable dental clinic or organization the Board shall investigate and make findings on the professional and statutory qualifications of such the charitable dental clinic or organization. In order for For the Board to recognize and approve a dental clinic or organization as qualifying under A.R.S. § 32-1237 as a charitable dental clinic or organization permitted to employ dentists not licensed in Arizona who hold restricted permits, the Board shall make the following findings of fact:

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1. That the entity is a dental clinic or other organization offering professional dental services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental services is operated for charitable purposes only, offering dental services either without compensation to the clinic or organization or with compensation at a minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization in all other respects operates in accordance with applicable provisions of law.

**R4-11-1003. R4-11-903. Recognition of a charitable dental clinic or organization Charitable Dental Clinic Organization**

The findings required by rule R4-11-1002 shall be based upon investigation by the Board, including review of the employment contract of such charitable clinic or organization for restricted permit holders, the Articles and Bylaws of such charitable dental clinic or organization, and any books, records or accounts of such dental clinic or organization which, in the Board's opinion are necessary to make the findings required under A.R.S. §§ 32-1237 and 32-1239. If the Board is unable to confirm the information required by statute it may request of the clinic or organization such other additional information as it determines necessary. In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

**R4-11-1004. R4-11-904. Determination of minimum rate Minimum Rate**

In determining whether professional services are provided at a minimum rate to provide reimbursement for dental supplies and overhead costs, pursuant to A.R.S. § 32-1237(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental services offered and any other information relevant to its inquiry.

**R4-11-1005. R4-11-905. Restricted permit denial Permit Denial**

If the applicant for restricted permit or the dental clinic or organization with whom the applicant has a pending contract refuses or fails to furnish information requested by the Board with the result that the Board is unable to perform its duties under A.R.S. §§ 32-1237 through 32-1239, the Board shall not issue a restricted permit to such the applicant or applicants.

**R4-11-906. Fully Retired or Permanently Disabled Licensees or Certificate Holders Providing Charitable Services**

A licensee or certificate holder who is fully retired or permanently disabled may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes.

**R4-11-907. Initial licensure fee—dentist**

The initial license fee required by A.R.S. § 32-1236(B) is \$75.00.

**R4-11-908. Initial licensure fee—hygienist**

The initial license fee required by A.R.S. § 32-1287(B) is \$35.00.

**ARTICLE 6. 10. REGULATION OF DENTAL  
TECHNICIAN TECHNICIANS**

**R4-11-602. R4-11-1001. Duties of dental technician Dental Laboratory Technician**

A dental technician may, pursuant to a written work order of a dentist, construct, alter, repair, reline, reproduce, or duplicate any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

**R4-11-603. R4-11-1002. Regulations relative to activities of dental technician Dental Technician Laboratory Work Orders**

- A. A duplicate copy of each such work order issued by the dentist shall be retained by the dentist for not less than two years. A dentist shall retain a copy of a dental technician laboratory work order for at least 2 years from date of issuance.
- B. The original of each such work order issued shall be retained by the technician to whom it was issued for not less than one year. A dental laboratory technician shall retain an original laboratory work order for at least 1 year from date of issuance.
- C. The Board or its agents shall be permitted. A dentist and a dental laboratory technician shall permit the Board to inspect upon demand, the original and the duplicate copy of all work orders retained by either the dentist issuing the same, or the technician to whom it was issued.

**ARTICLE 11. ADVERTISING**

**R4-11-1101. Advertising**

- A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist practices in 1 of the specialty areas listed below, is recognized by the specialty board which certifies specialists for that area, and is accredited by the Commission on Dental Accreditation of the American Dental Association:
  1. Endodontics,
  2. Oral and maxillofacial surgery,
  3. Orthodontics and dentofacial orthopedics,
  4. Pediatric dentistry,
  5. Periodontics,
  6. Prosthodontics,
  7. Dental Public Health, or
  8. Oral Pathology.
- B. For purposes of this Article, a dentist who wishes to advertise as a specialist in a recognized field shall meet the criteria in 1 or more of the following categories:
  1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association.
  2. Educationally qualified: A dentist who has successfully completed an educational program, 2 or more years long, in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association.
  3. Board eligible: A dentist who has met the guidelines of an established specialty board in a recognized specialty area that operates in accordance with the requirements established by the American Dental Association. The specialty board shall have established examination requirements and standards, appraised an applicant's qualifications, administered comprehensive examinations, and upon completion issued a certificate to a dentist who has achieved diplomate status.

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4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (B)(3), and who has received a certificate from the speciality board, indicating the dentist has achieved diplomate status.
- C. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (A), and recognized by a specialty board which has been accredited by the Commission on Dental Accreditation of the American Dental Association, has violated this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline pursuant to A.R.S. Title 32, Chapter 11.
- D. A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

**R4-11-1104. Advertising as a specialist**

A dentist shall not use the terms "specialty" or "specialist" nor any of the terms used to designate a dental specialty such as:

1. Endodontist
2. Oral or maxillofacial surgeon
3. Orthodontist
4. Pedodontist
5. Periodontist
6. Prosthodontist or any derivation of such words to describe or advertise his or her professional services unless the dentist is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association or other generally recognized accreditation organization as board eligible or board certified within the specialty described or advertised.

**ARTICLE 14. 12. CONTINUING DENTAL EDUCATION**

**R4-11-1402. R4-11-1201. Continuing Dental Education**

- A. A person who holds an active license to practice dentistry or dental hygiene, or a certificate to practice denturism in this state, or who holds a license, certificate holder, or restricted permit holder to practice dentistry in this state shall satisfy a continuing dental education requirement which is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee, certificate holder, or restricted permit holder's practice of the dentistry.
- B. Every A licensee, or certificate holder, or restricted permit holder shall complete the recognized continuing dental education as prescribed by these rules required by Article 12 each triennial period.
- C. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full triennial period.

**R4-11-1403. R4-11-1202. Compliance with Continuing Dental Education Requirements**

- A. When applying for a renewal license or certificate pursuant to A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, the dentist, dental hygienist, or denturist shall certify to the Board completion of the prescribed credit hours of recognized continuing dental education triennially.

- B. Each A licensee or certificate holder shall possess, prior to before receiving an original or renewal license or certificate, a current cardiopulmonary resuscitation (CPR) certificate from the American Red Cross, or the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association.
- C. An application for renewal of a license or certificate must be accompanied by A licensee or certificate holder shall include a written affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. The A licensee or certificate holder shall include on the affidavit shall include the licensee's or certificate holder's name, license or certificate number, name of sponsor, program title and description, date, time, and location of the program, and dates of attendance.
- D. If a licensee or certificate holder fails to meet the credit hour requirement because of illness, military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement. The licensee or certificate holder shall request an extension prior to before the time for renewal.
- E. Only The Board shall only accept recognized continuing dental education credits accrued during the triennial period immediately prior to before renewal shall be acceptable for license or certificate renewal.
- F. Recognized A licensee or certificate holder shall not carry forward recognized continuing dental education credit hours in excess of the required credit hours shall not be carried forward to the a succeeding triennial renewal period.
- G. Each A licensee or certificate holder shall maintain and preserve documentation of attendance for each program for which credit is claimed. Such The documentation shall verify the recognized continuing dental education credit hours in which the licensee or certificate holder has participated during for the preceding 2 triennial renewal periods.
- H. Each year, the Board shall select audit continuing education affidavits for audit on a random basis or when the documentation submitted by the licensee or certificate holder does not appear to comply with this Section. The affidavits may be selected randomly or on the basis of any reasonable concerns of the Board regarding a particular licensee or certificate holder. A licensee or certificate holder whose affidavit is selected for audit shall provide the Board with documentation of attendance in support of the affidavit within 60 days from the date the licensee or certificate holder received notice, by certified mail, of the audit.
- I. Any false statement in an affidavit shall be grounds for suspension, revocation, refusal to renew a license or certificate, or any other disciplinary action authorized by A.R.S. § 32-1263(4) A.R.S. Title 32, Chapter 11.

**R4-11-1404. R4-11-1203. Continuing Dental Education Requirements for Dentists**

Dentists A dentist shall complete 72 hours of recognized continuing dental education in a triennial period as follows:

1. At least 45 credit hours of recognized continuing dental education shall be in one 1 or more of the following areas: Dental and medical health, cardiopulmonary resuscitation, preventative services, dental diagnosis and treatment planning, dental clinical procedures, including courses in corrective and restorative oral health and

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basic dental sciences which may include current research, new concepts in dentistry, and behavioral and biological sciences which are oriented to dentistry. A licensee who holds a permit to administer anesthesia, semi-conscious sedation, or conscious sedation who is required to obtain continuing education pursuant to R4-11-805 Article 13 may apply those credit hours to this requirement.

2. No more than 18 credit hours of recognized continuing dental education shall be in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery.
3. At least ~~three~~ 3 credit hours of recognized continuing dental education shall be in the area of chemical dependency.
4. At least ~~six~~ 6 credit hours of recognized continuing dental education shall be in the area of infectious diseases and infectious disease control.
5. ~~Credit~~ The Board may apply credit hours earned by a licensee in continuing education ordered by the Board pursuant to A.R.S. § 32-1263.01(A)(8) may be applied to the A.R.S. Title 32, Chapter 11 toward a licensee's 72-hour requirement.

**R4-11-1405. R4-11-1204. Continuing — Dental — Education Requirements for Dental Hygienists**

Dental hygienists A dental hygienist shall complete 54 credit hours of recognized continuing dental education in a triennial period as follows:

1. At least 34 credit hours of recognized continuing dental education shall be in ~~one~~ 1 or more of the following areas: Dental and medical health, cardiopulmonary resuscitation, and dental hygiene services, which may include periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, and new concepts in dental hygiene.
2. No more than 14 credit hours of recognized continuing dental education shall be in ~~one~~ 1 or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery.
3. At least ~~two~~ 2 credit hours of recognized continuing dental education shall be in the area of chemical dependency.
4. At least ~~four~~ 4 credit hours of recognized continuing dental education shall be in the area of infectious diseases and infectious disease control.
5. ~~Credit~~ The Board may apply credit hours earned by a licensee in continuing education ordered by the Board pursuant to A.R.S. § 32-1263.01(A)(8) may be applied to the A.R.S. Title 32, Chapter 11 toward a licensee's 54-hour requirement.

**R4-11-1406. R4-11-1205. Continuing — Dental — Education Requirements for Denturists**

Denturists shall complete 24 credit hours of recognized continuing dental education in a triennial period as follows:

1. At least 15 credit hours of recognized continuing dental education shall be in 1 or more of the following areas: Medical and dental health, cardiopulmonary resuscitation, laboratory procedures, and clinical procedures.
2. No more than 6 credit hours of recognized continuing dental education may be in 1 or more of the following areas: Denturist practice organization and management,

patient management skills, and methods of health care delivery.

3. At least 1 credit hour of recognized continuing dental education shall be in the area of chemical dependency.
4. At least 2 credit hours of recognized continuing dental education shall be in the area of infectious diseases and infectious disease control.
5. ~~Credit hours earned by a certificate holder in continuing education ordered by the Board pursuant to A.R.S. § 32-1263.01(A)(8) may be applied to the certificate holder's 24-hour requirement. The Board may apply credit hours earned by a certificate holder in continuing education ordered by the Board pursuant to A.R.S. Title 32, Chapter 11 toward a certificate holder's 24-hour requirement.~~

**R4-11-1407. R4-11-1206. Continuing — Dental — Education Requirements for Restricted Permit Holders**

A licensee holding a restricted permit holder shall comply with the requirements in R4-11-1403 R4-11-1202 except as indicated below:

1. When applying for a renewal license pursuant to A.R.S. § 32-1238, the licensee shall ~~certify to the Board completion of~~ provide information to the Board that the licensee has completed 24 credit hours of recognized continuing dental education yearly.
2. Each renewal application for renewal must be accompanied by ~~shall include~~ shall include a written affidavit affirming the licensee's completion of 24 credit hours of recognized continuing dental education. The affidavit shall include a licensee's name, license number, name of sponsor, program title and description, date, time, and location of the program, and dates of attendance.
3. ~~Only To determine whether to grant the renewal, the Board shall only consider~~ recognized continuing dental education credits accrued during the period of between July 1 to and June 30 of the year immediately prior to renewal shall be considered for restricted permit renewal immediately before the licensee submitted the renewal application.
4. ~~Each licensee holding a A restricted permit holder shall maintain and preserve~~ documentation of attendance for each program for which credit is claimed. Such The documentation shall verify the recognized continuing dental education credits in which the licensee has participated during the preceding two 2 renewal periods.
5. ~~Each licensee holding a A restricted permit holder shall complete 24 hours of recognized continuing dental education prior to renewal as follows:~~
  - a. At least 15 credit hours of recognized continuing dental education shall be in ~~one~~ 1 or more of the subjects enumerated in R4-11-1404(1) R4-11-1203(1).
  - b. No more than ~~six~~ 6 credit hours of recognized continuing dental education may be in ~~one~~ 1 or more of the subjects enumerated in R4-11-1404(2) R4-11-1203(2).
  - c. At least ~~one~~ 1 credit hour of recognized continuing dental education shall be in the subjects enumerated in R4-11-1404(3) R4-11-1203(3).
  - d. At least ~~two~~ 2 credit hours of recognized continuing dental education shall be in the subjects enumerated in R4-11-1404(4) R4-11-1203(4).
  - e. ~~Credit~~ The Board may apply credit hours earned by a licensee in continuing education ordered by the Board pursuant to A.R.S. § 32-1263.01(A)(8) may

be applied to the A.R.S. Title 32, Chapter 11 toward a licensee's 24-hour requirement.

**R4-11-1408, R4-11-1207, Types of Courses**

Recognized continuing dental education shall be obtained by each A licensee or certificate holder shall obtain recognized continuing dental education from one 1 or more of the following types of curricula:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry; or
2. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. §§ 32-1201(14), 32-1201(15), and 32-1201(16) Title 32, Chapter 11.
3. No more than 18 credit hours for dentists, 14 credit hours for dental hygienists, or six 6 credit hours for denturists per triennial period shall be earned for any of the following activities which provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
  - a. A dental education program based on self-instruction which utilizes videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, computers, or independent reading with examination;
  - b. Participation on the Arizona State Board of Dental Examiners or in Board complaint investigations including clinical evaluations and investigative interviews, peer review, or quality of care and/or utilization review in a hospital, or institution, or governmental agency;
  - c. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school as defined at A.R.S. § 32-1201(15), recognized dental hygiene school as defined at A.R.S. § 32-1201(14), or recognized school of denture technology as defined at A.R.S. § 32-1201(16), or is sponsored by a national or state dental, dental hygiene, or denturist association; or
  - d. Publication or presentation of a dental paper, report, or book that the licensee or certificate holder has authored and published, which provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. Credit hours shall be claimed only once for materials presented. Credits shall be claimed as of the date of publication or original presentation. One credit hour may be reported per hour of preparation, writing, and/or presentation.

**ARTICLE 8. 13. GENERAL ANESTHESIA AND SEDATION**

**R4-11-802 R4-11-1301. General anesthesia and semi-conscious sedation Anesthesia and Semi-Conscious Sedation**

A. In order to To administer general anesthesia by any means, or semi-conscious sedation by intravenous or intramuscular means, on an outpatient basis, a dentist shall possess a permit to administer general anesthesia and semi-conscious sedation (hereinafter a "Section 802 1301 permit") issued by the board Board. Such A Section 802 1301 permit shall be renewed every three 3 years by complying with R4-11-806 R4-11-1305.

B. In order to To obtain or renew a Section 802 1301 permit, the a dentist shall:

1. Apply to the board Board on the prescribed application form available from the board Board office. The application form shall require information as to each of the conditions for issuance and renewal of about each requirement to issue and renew a Section 802 1301 permit, as specified in subsections (B)(2) and (3) of this section, and R4-11-806 R4-11-1305.
  - a. The application form shall require general information about the applicant including such as: name; home and office addresses and telephone numbers; limitations of practice; hospital affiliations; denial, curtailment, revocation, or suspension of hospital privileges; and denial of membership in, or renewal of membership in, or disciplinary action by any dental regulatory body or dental organization.
  - b. The application form shall require the dentist to sign an affidavit stating that information provided is true, and that the dentist has read and complied with the Laws and Rules of the Arizona State Board of Dental Examiners and is in compliance with them the Board's statutes and rules. The dentist shall return the completed form to the board Board office;.
2. Produce evidence that the dentist:
  - a. Will administer general anesthesia and semi-conscious sedation in a facility or facilities containing the following properly operating equipment and supplies: anesthesia or analgesia machine; emergency drugs; electrocardiograph monitor; pulse oximeter; cardiac defibrillator; positive pressure oxygen; suction; laryngoscope and blades; endotracheal tubes; Magill forceps; oral airways; stethoscope and blood pressure monitoring device; and
  - b. Has a supervised team of auxiliary personnel for each facility in which the dentist will administer general anesthesia and semi-conscious sedation. The teams A team shall be capable of handling procedures, problems, and emergency incidents. All team members shall hold a current certification in basic cardiopulmonary resuscitation (CPR) annually; and
  - c. Holds a valid license to practice dentistry in Arizona; and
  - d. Maintains a current permit to prescribe and administer controlled substances in Arizona issued by the United States Drug Enforcement Administration; and
  - e. Has passed a course approved by the American Heart Association or the American Red Cross on advanced cardiac life support (ACLS) within the two 2 years previous to application for permit under this Article before submitting the permit application; and
3. Meets one 1 or more of the following conditions:
  - a. Has completed a minimum of one year's advanced full credit load, as defined by the training program, during 1 calendar year of training, in anesthesiology or related academic subjects, or its equivalent beyond the undergraduate dental school level in a training program as described in R4-11-805(A) R4-11-1304(A), which is offered by a hospital accredited by the Joint Commission of Accreditation of Hospitals Organization, or sponsored by a univer-

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- city accredited by the American Dental Association Commission on Dental Accreditation; or
- b. Is a Diplomate of the American Board of Oral and Maxillofacial Surgeons, or is eligible for examination by the American Board of Oral and Maxillofacial surgeons, or is a Fellow of the American Association of Oral and Maxillofacial surgeons, or is a Fellow of the American Dental Society of Anesthesiology or is eligible for examination by the American Dental Society of Anesthesiology; or
  - c. Employs or works in conjunction with a licensed medical or osteopathic physician who is a member of the anesthesiology staff of an accredited hospital in Arizona provided that such ~~and the~~ anesthesiologist shall remain on the premises of the ~~remains on~~ dental facility premises until any patient given general anesthetic or semi-conscious sedation regains consciousness and is discharged.
- C. ~~Upon receipt by the Board office of~~ After submitting the application and written evidence of compliance with requirements outlined in ~~R4-11-802(B) subsection (B) to the Board,~~ the dentist shall ~~arrange with the board to~~ schedule an on-site evaluation of each facility ~~by the Board in which the dentist will shall~~ administer general anesthesia and semi-conscious sedation. ~~Upon successful completion of the on-site evaluations, the dentist shall be notified in writing, and receive a Section 802 permit. After a dentist completes the application requirements and successfully completes the on-site evaluation, the Board shall issue the dentist a 1301 permit.~~
1. The on-site evaluation ~~team~~ shall be conducted by an evaluation team comprised of two 2 dentists who are ~~Board members of the board, or who are Board designees of the board.~~ The on-site evaluation of the dentist's first or only facility shall consist of ~~team~~ shall look for the following:
    - a. ~~Successful demonstration of the~~ The availability of equipment and personnel ~~by the dentist, pursuant to R4-11-802(B)(2) Subsection (B)(2);~~
    - b. Proper administration of general anesthesia or parenteral semi-conscious sedation to a patient by the dentist ~~in the presence of before~~ the evaluation team; ~~and~~
    - c. Successful responses to oral examination questions, ~~which shall include questions concerning about~~ patient management, medical emergencies, and emergency medications.
  2. The on-site evaluation of the dentist's ~~a subsequent facility in which general anesthesia is administered shall consist of the elements described in Subsection (C)(1)(a) of this Section only: as verified by an affidavit.~~
- D. ~~The~~ A dentist shall keep an anesthesia record for each general anesthesia and semi-conscious sedation administered.
  1. The record shall include the following entries: pre-and postoperative ~~post-operative~~ electrocardiograph reports; pre-, post-, and intra-operative pulse oximeter readings; blood pressure and vital signs; intra-operative blood pressures; and a list of all medications given, with dosage and time intervals.
  2. The record may include the following entries: route and site of administration; type of catheter or portal with gauge; nothing by mouth or last intake noted; consent form; time of discharge and status, including name of escort.
- E. A dentist, who has obtained a Section 802 1301 permit under ~~this Article~~ to administer general anesthesia and semi-conscious sedation, may employ a nurse anesthetist to administer general anesthesia and semi-conscious sedation under the direct supervision of the dentist.
- F. ~~Each dentist who has been approved by the board to use general anesthesia or semi-conscious sedation prior to the date of adoption of this Article, or has been using general anesthesia or semi-conscious sedation in another state, shall make application on the prescribed form to the board to continue to use and employ general anesthesia and semi-conscious sedation. If the dentist meets the requirements of this Article, to include successful completion of on-site evaluations, a Section 802 permit shall be issued.~~
- G.F. A dentist who has obtained a Section 802 1301 permit under ~~this Article~~ shall is also be authorized to administer conscious sedation without obtaining a separate Section 803 1302 permit.
- R4-11-803 R4-11-1302. Conscious Sedation**
- A. A dentist who possesses a Section 802 1301 permit is also authorized to administer conscious sedation. ~~In order to To~~ administer conscious sedation by intravenous or intramuscular means on an outpatient basis, a dentist who does not possess a Section 802 1301 permit shall possess a permit to administer conscious sedation (hereinafter, "Section 803 1302 permit") issued by the board ~~Board~~. The Section 803 1302 permit shall be renewed every three 3 years by complying with ~~R4-11-806 R4-11-1305.~~
- B. ~~In order to To~~ obtain or renew a Section 803 1302 permit, the dentist shall:
  1. Apply to the board ~~Board~~ on the prescribed application form available from the Board office. The application form shall require information ~~as to each of the conditions for issuance and renewal of regarding the requirements to obtain and renew a Section 803 1302 permit, as specified in subsections (B)(2) and (3) of this section and R4-11-806 R4-11-1305.~~
    - a. The application form shall require general information about the applicant ~~including such as:~~ name; home and office addresses and telephone numbers; limitations of practice; hospital affiliations; denial, curtailment, revocation, or suspension of hospital privileges; and denial of membership in, or renewal of membership in, or disciplinary action by any dental regulatory body or dental organization.
    - b. The application form shall require the dentist to sign an affidavit stating that information provided is true, and that the dentist has read ~~the Laws and Rules of the Arizona State Board of Dental Examiners and is in compliance with them and complied with the Board's statutes and rules.~~ The dentist shall return the completed form to the board ~~Board~~ office; ~~and~~
  2. Produce evidence that the dentist:
    - a. Will administer conscious sedation intravenously or intramuscularly in a facility ~~or facilities~~ containing the following properly operating equipment ~~and supplies:~~ emergency drug kit ~~drugs;~~ positive pressure oxygen; stethoscope; suction; nasopharyngeal tubes; pulse oximeter; oropharyngeal tubes; and, blood pressure monitoring device; ~~and~~
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents ~~thereto~~ for each facility in which the dentist will administer conscious sedation. At least ~~one~~ 1 staff member, present during the procedure.

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- dure, shall be certified in basic cardiac life support (CPR) annually; and
- c. Holds a valid license to practice dentistry in Arizona; and
  - d. Maintains a current permit to prescribe and administer controlled substances in Arizona issued by the United States Drug Enforcement Administration; and
  - e. Has passed a course approved by the American Heart Association or the American Red Cross on advanced cardiac life support (ACLS) within the two 2 years previous to application for permit under this Article before submitting the permit application; and
  - f. Has participated in 60 clock hours of Board approved undergraduate, graduate, or postgraduate education within the last three 3 years before submitting the permit application, which includes training in basic conscious sedation, including administration of parenteral sedative medications to at least 10 patients; physical evaluation, management of medical emergencies, monitoring, and the use of monitoring equipment.
- C. Upon receipt by the Board office of ~~After submitting the application and written evidence of compliance with requirements outlined in R4-11-803(B) subsection (B) to the Board, the dentist shall arrange with the board to schedule an on-site evaluation of each facility by the Board in which the dentist will shall administer conscious sedation. Upon successful completion of the on-site evaluation, the dentist shall be notified in writing, and receive a Section 803 permit to administer conscious sedation. After a dentist completes the application requirements and successfully completes the on-site evaluation, the Board shall issue the dentist a 1302 permit.~~
1. The on-site evaluation shall be conducted by an evaluation team comprised of two team shall be 2 dentists who are Board members of the board, or who are Board designees of the Board. On-site ~~The on-site~~ evaluation of the dentist's first or only facility shall consist of team shall look for the following:
    - a. ~~Successful demonstration of the~~ The availability of equipment and personnel by the dentist pursuant to R4-11-803(B)(2) subsection (B)(2);
    - b. Proper administration of conscious sedation to a patient by the dentist in the presence of before the evaluation team; and
    - c. Successful responses to oral examination questions, which shall include questions concerning about patient management, medical emergencies, and emergency medications.
  2. The on-site evaluation of the dentist's second and each of a subsequent facility in which conscious sedation is administered shall consist of the elements described in Subsection (C)(1)(a) of this Section only, as verified by an affidavit.
- D. The A dentist shall keep an anesthesia record for each conscious sedation administered.
1. The record shall include the following entries: pre-, post-, and intra-operative pulse oximeter readings; pre- and postoperative blood pressure and vital signs; intra-operative blood pressures; and a list of all medications given, with dosage and time intervals;
  2. The record may include the following entries: pre- and postoperative post-operative electrocardiograph report;
- route and site of administration; type of catheter or portal with gauge; nothing by mouth or last intake noted; consent form; time of discharge and status, including name of escort.
- E. A dentist who has obtained a Section 803 1302 permit under this Article to administer conscious sedation, may employ a nurse anesthetist to administer conscious sedation under the direct supervision of the dentist.
  - F. Each dentist who has been approved by the board to administer conscious sedation prior to the date of this Article, or has been using conscious sedation in another state, shall make application on the prescribed form to the board to continue to use and employ conscious sedation. If the dentist meets the requirements of this Article, to include successful completion of on-site evaluations, a Section 803 permit shall be issued.
- R4-11-804. R4-11-1303. Reports of adverse occurrences Adverse Occurrences**
- If a mortality death, or other incident causing a patient temporary or permanent physical or mental injury or requiring medical intervention, occurs in a dental an outpatient facility occurs as a direct result of the administration of general anesthesia, semi-conscious sedation, or conscious sedation and causes a temporary or permanent physical or mental injury of patients, or requires the transport of the patient to any hospital or emergency medical facilities, or requires the call of a paramedic unit, the dentist(s), the permit holder and the treating dentist involved must shall submit a complete report of the incident to the Board within ten 10 days after its occurrence.
- R4-11-805 R4-11-1304. Educational Requirements Education**
- A. In order to To obtain a Section 802 1301 permit, by satisfying the educational education requirement of R4-11-802(B)(3)(a) R4-11-1301, a dentist shall successfully complete an advanced education program (postgraduate or graduate) in pain control.
    1. The program shall include instruction in the following subject areas:
      - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
      - b. Physiological and/or and psychological risks for the use of various modalities of pain control;
      - c. Psychological and/or and physiological need for various forms of pain control and their the potential response to pain control procedures;
      - d. Techniques of local anesthesia, sedation, and general anesthesia as well as in, and psychological management and behavior modification, as they relate to pain control in dentistry; and
      - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
    2. The program shall consist of didactic as well as and clinical training. The didactic component of the program shall be the same for all dentists, regardless of whether they will be general practitioners, or specialists. The didactic component shall include each subject area listed in Subsection (A)(1) of this section.
    3. The trainee dentist shall receive complete at least one 1 calendar year of training as prescribed in R4-11-1301(B)(3)(a).
  - B. In order to To maintain a Section 802 or Section 803 1301 or 1302 permit pursuant to R4-11-802 or R4-11-803 R4-11-

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1301 or R4-11-1302, a dentist shall participate in 12 clock hours of continuing education every ~~three~~ 3 years. The education shall be in ~~one~~ 1 or more of the following areas: general anesthesia; conscious sedation; physical evaluation; medical emergencies; monitoring and use of monitoring equipment; or pharmacology of utilized drugs and agents. In addition to these 12 hours, the dentist shall pass a course approved by the American Heart Association or American Red Cross on advanced cardiac life support (ACLS), at intervals described in ~~R4-11-802(B)(2)(e) and R4-11-803(B)(2)(e)~~ R4-11-1301(B)(2)(e) and R4-11-1302(B)(2)(e).

**R4-11-806 R4-11-1305. Renewal of Permit**

- A. ~~In order to obtain renewal of To~~ renew a Section 802 or Section 803 1301 or 1302 permit before December 31 of every 3rd year, the a dentist shall provide written documentation of compliance with continuing education requirements, as prescribed by ~~R4-11-805(B) in R4-11-1304~~ by submitting the application form to the Board described in ~~R4-11-802(B)(1) and R4-11-803(B)(1)~~ Article 13. Not less than 90 days prior to ~~before~~ the expiration of the a dentist's current permit, the dentist shall arrange for a new on-site evaluation or evaluations as described in ~~R4-11-802(C) and R4-11-803(C)~~ Article 13. Upon successful completion of the on-site evaluations ~~After a dentist has successfully completed the evaluation and submitted required affidavits,~~ the board Board shall issue a renewal Section 802 or Section 803 1301 or 1302 permit.
- B. The Board may stagger renewal according to an alphabetical division as prescribed by the Board in a manner that maintains a nearly equal yearly renewal due dates for renewal applications.

**ARTICLE 14 DISPENSING DRUGS AND DEVICES FOR PROFIT AND NOT FOR PROFIT**

**R4-11-1401. Definitions**

In this Article, unless the context otherwise requires:

1. "Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment and is provided by a recognized dental school as defined at A.R.S. § 32-1201(15), recognized dental hygiene school as defined at A.R.S. § 32-1201(14), or recognized school of denture technology as defined at A.R.S. § 32-1201(16) or is sponsored by a national or state dental, dental hygiene, or dentist association, dental, dental hygiene, or dentist study club, governmental agency, or commercial dental supplier.
2. "Documentation of attendance" means a document containing the following:
- a. Name of sponsoring entity;
  - b. Course title and synopsis;
  - c. Number of hours of credit claimed;
  - d. Name of speaker or lecturer;
  - e. Date, time, and location of course; and
  - f. Verification of registration.
3. "Licensee" means any dentist, dental hygienist, or individual who holds a restricted permit to practice dentistry in this state pursuant to A.R.S. § 32-1237.
4. "Certificate holder" means a dentist who practices denture technology pursuant to A.R.S. § 32-1293 et seq.
5. "Credit hour" shall be equal to one clock hour of participation in a recognized continuing dental education program.

**R4-11-1401. Registration and Renewal**

- A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription

only drugs, and prescription-only devices for profit after providing the Board the following information:

1. A completed registration form which includes the following information:
    - a. The dentist's name and dental license number;
    - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
    - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
  2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
- B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.
- C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's June 30 triennial license expiration date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

**R4-11-1402. Prescribing**

- A. A prescription order shall contain, in addition to the requirements of A.R.S. § 32-1298(C), the following information:
1. Date of issuance;
  2. Name and address of the patient to whom the prescription has been issued;
  3. Name, strength, and quantity of the drug prescribed;
  4. Name and address of the dentist prescribing the medication; and
  5. Drug Enforcement Administration registration number of the dentist prescribing for controlled substances.
- B. Before dispensing for profit, a dentist shall write a prescription for the drug or device being dispensed, and include on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice." If a dentist is not dispensing for profit, a prescription does not need to be written.

**R4-11-1403. Labeling and Dispensing**

- A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
  2. The serial number;
  3. The date the drug or device is dispensed;
  4. The patient's name;
  5. Name, strength, and quantity of drug dispensed;
  6. The name of the drug manufacturer or distributor;
  7. Directions for use and cautionary statement necessary for the safe and effective use of the drug or device; and
  8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
- B. A dentist shall perform the following professional practices, in directly dispensing for profit a prescription medication or device from a prescription order:
1. Verify the legalities and pharmaceutical feasibility of dispensing, including allergies, incompatibilities, unusual quantities of dangerous drugs or narcotics, and signature of the prescribing dentist;

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2. Verify that the dosage is within proper limits;
  3. Interpret the prescription order;
  4. Prepare the package and label, or assume responsibility for preparing, packaging, and labeling the medication or device, dispensed under an individual prescription order;
  5. Check the label to verify it precisely communicates the prescriber's directions and hand-initial every label;
  6. Record, or assume responsibility for recording the serial number and the date dispensed on the front of the original prescription order; and
  7. Record on the original prescription order the name or initials of the dentist who dispensed the order.
- C. Before delivery, the dentist shall prepare the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
- D. A dentist shall purchase all dispensed drugs and devices from a licensed manufacturer, distributor, or pharmacy.

**R4-11-1404. Storage and Packaging**

- A. A dentist shall keep all drugs and devices secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The written procedure shall be made available to the Board or its authorized agents on demand for inspection or copying.
- B. A dentist shall maintain storage rooms so that the temperature in the storage rooms does not exceed 85° Fahrenheit.
- C. A dentist shall not dispense a drug or device that has expired or is improperly labeled.
- D. A dentist shall not redispense a drug or device that has been returned.
- E. A dentist shall dispense a drug or device:
1. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
  2. With a label that is mechanically or electronically printed.
- F. A dentist shall destroy controlled substances pursuant to the Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.
- G. A dentist shall destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.
- E. A dentist shall maintain invoices, for drugs and devices dispensed for profit and not for profit, for 3 years from the date of the invoices, filed as follows:
1. Schedule II drug invoices shall be filed separately from all other records;
  2. Schedule III, IV, and V drugs shall be filed separately from all other records; and
  3. All other invoices shall be filed separately from those referenced in Subsections (E)(1) and (2).
- F. A dentist shall file Drug Enforcement Administration order forms, No. DEA 222, for controlled substances sequentially and separately from every other record.

**R4-11-1406. Compliance**

- A. A dentist who determines that drugs have been illegally removed from the dentist's office, or that there is a drug shortage of controlled substances, shall immediately notify a local law enforcement agency and the Board. The dentist also shall provide the law enforcement agency with a written report, using a DEA 106 form, and provide copies to the Drug Enforcement Administration and the Board within 7 days of the discovery.
- B. A dentist who dispenses drugs or devices in a manner inconsistent with Article 14 is subject to discipline pursuant to A.R.S. Title 32, Chapter 11, Article 3.

**R4-11-1409. Implementation of Continuing Dental Education Rules**

- Upon adoption of these rules, licensees and certificate holders shall comply in accordance with the following schedule:
1. A licensee or certificate holder whose license or certificate is renewable in less than 12 months from the effective date of these rules is exempt from recognized continuing dental education requirements for the period prior to renewal.
  2. A licensee or certificate holder whose triennial license or certificate is renewable within 12 to 24 months from the effective date of these rules shall complete 24 credit hours for a dentist, 18 credit hours for a dental hygienist, and eight credit hours for a denturist of recognized continuing dental education for the period prior to renewal.
  3. A licensee or certificate holder whose triennial license or certificate is renewable within 24 to 36 months from the effective date of these rules shall complete 48 credit

**R4-11-1405. Record Keeping**

- A. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices were originally dispensed.
  2. Sequentially file orders separately from patient records, as follows:
    - a. Schedule II drug orders shall be filed separately from all other prescription orders;
    - b. Schedule III, IV, and V drug orders shall be filed separately from all other prescription orders; and
    - c. All other prescription orders shall be filed separately from those stated in Subsections (A)(2)(a) and (b).
  3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label, and

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- hours for a dentist, 36 credit hours for a dental hygienist, and 16 credit hours for a denturist of recognized continuing dental education for the period prior to renewal.
4. Thereafter all licensees and certificate holders shall fully comply with the prescribed credit hours of recognized continuing dental education prior to each renewal.
  5. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education upon completion of the first full triennial period.

**ARTICLE 3. 15.COMPLAINTS, INVESTIGATIONS,  
DISCIPLINARY ACTION, REINSTATEMENT OF  
REVOKED LICENSES**

**R4-11-1501. Ex-parte Communication**

A complainant and licensee or certificate holder against whom a complaint has been filed, shall not engage in ex-parte communication.

**R4-11-1502. Complaint Investigator Qualifications**

A dentist, dental hygienist, or denturist appointed as a Board investigator shall:

1. Possess a valid license, restricted permit, or certificate to practice in Arizona;
2. Have at least 5 years of practice in Arizona; and
3. Not have been disciplined by the Board within the past 24 months.

**R4-11-1503. Initial Complaint Review**

**A.** The president's designee shall initially review a complaint. If the designee determines that the Board has no jurisdiction, the complaint shall be forwarded to the Board for termination.

**B.** If the designee determines that the Board has jurisdiction:

1. Board personnel shall notify the complainant and licensee or certificate holder of the investigative and adjudicative process as follows:
  - a. By regular U.S. Mail that the complaint has been filed and whether a clinical evaluation will be scheduled; and
  - b. By certified U.S. Mail of an informal interview, investigative interview, or mediation, if the complaint has been tabled or remanded, of a postponement or continuance, and a subpoena, notice, or order.
2. The president's designee shall refer the complaint to an informal interview, investigative interview, or mediation. Where the allegations, if proven, may result in suspension or revocation of license or certificate, the complaint shall be referred to an informal interview. All other complaints shall be referred to investigative interview or mediation.
3. The Board may subpoena a patient's treatment records from the licensee, certificate holder, or any other health care provider.
4. Board personnel shall provide the licensee or certificate holder with a copy of the complaint upon receipt of the treatment records.
5. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.
6. If during the course of investigating a complaint, but before an investigative or informal interview, it appears the evidence does not support the allegations contained in the complaint the president's designee shall forward the complaint to the Board for termination.

**C.** The Board's procedures for complaints referred to clinical evaluation are:

1. Except as provided in subsection (C)(1)(a), the president's designee shall appoint 1 or more dentists to perform a clinical evaluation. If there is more than 1 clinical evaluation, the clinical evaluators do not need to be present at the same time. The Board shall approve each clinical evaluator.
  - a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist, the president's designee shall appoint a clinical evaluator from that area of practice or specialty.
  - b. The Board shall not disclose the identity of the licensee to a clinical evaluator before the Board receives the clinical evaluator's report.
2. The president's designee or clinical evaluator shall prepare a clinical evaluation report for the informal or investigative interview or Board meeting. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report before the informal or investigative interview or Board meeting.

**D.** The Board's procedures for investigative and informal interviews are as follows:

1. Board personnel shall provide the complainant and licensee or certificate holder with written notice of the time and date of the investigative interview or informal interview. The notice shall include all allegations contained in the complaint and any allegation which arose during the Board's investigation before the notice date.
2. The Board's president or the president's designee may request an informal interview. The Board president or president's designee:
  - a. May appoint 1 or more Board members to act as the informal interviewing officer; or
  - b. May appoint a Board approved investigator to assist the informal interviewing officer; and
  - c. Shall appoint 1 investigator or Board member from the relevant area of practice or specialty, if the licensee or certificate holder is a dental hygienist, denturist, or recognized dental specialist.
3. If a complaint is referred for an investigative interview, the president's designee shall appoint an investigator or an investigative panel, consisting of at least 2 dentists and 1 lay person to conduct the investigative interview. One panel member, who is not a lay person, shall serve as the chairperson. If the licensee or certificate holder is a dental hygienist, denturist, or a recognized dental specialist, at least 1 investigator shall be from that area of practice or specialty.
4. The complainant and licensee may agree to waive the requirements in this section regarding appointment of a licensee from a specific practice area or specialty, or a lay person.
5. The complainant and licensee or certificate holder and any witness present at the informal interview or investigative interview may be questioned by the informal interviewing officer, investigators, or investigative interview panel. Counsel representing the complainant, licensee, or certificate holder, or the complainant, licensee, or certificate holder may direct questions through the chairperson of the investigative interview panel or informal interviewing officer. Following the presentation of all testimony and evidence, the complainant and

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- licensee or certificate holder or their respective representative may make a closing statement.
6. The informal interviewing officer, investigator, or investigative interview panel shall develop findings of fact, conclusions of law, and a recommendation for disposition of the complaint based on the treatment records, the clinical evaluation observations and documentation, testimony of the complainant and licensee or certificate holder, and any other witnesses or relevant documents.
  7. Board personnel shall prepare a written report of the investigative or informal interview from the recording of the interview and the informal interviewing officer's or investigator's or investigative interview panel's written findings of fact, conclusions of law, and recommendation.
  8. Board personnel shall record all informal and investigative interviews mechanically or stenographically.

**R4-11-1504. Reinstatement**

- A. A person who wants to reinstate a revoked license shall comply with the application requirements in A.R.S. Title 32, Chapter 11 and this Chapter.
- B. An applicant for reinstatement also shall provide information to the Board reflecting that the applicant is rehabilitated with respect to the conduct which was the basis for the revocation.
- C. An applicant for reinstatement who submits an application more than 5 years after the date of revocation shall also comply with the examination requirements in A.R.S. Title 32, Chapter 11 and this Chapter.

**ARTICLE 16. MEDIATION**

**R4-11-1601. Mediation Process**

- A. The Board's executive director or chief investigator shall review each complaint that does not involve dental incompetence, malpractice, or criminal allegations to decide whether to refer the complaint to mediation.
- B. A complaint against a respondent who has 2 or more final Board disciplinary actions in the 24 months immediately preceding the date that the current complaint was filed with the Board shall not be referred to mediation.
- C. If a complaint is referred to mediation, the investigator shall seek written agreements from the complainant and respondent to participate in mediation before mediation proceeds.
- D. The Board's staff may subpoena relevant records. The Board's staff shall provide the mediator with all documentation regarding the complaint including the complaint, response, dental records, billings, and correspondence. The documents obtained by subpoena or produced by either the complainant or the respondent may be used in the investigation of the complaint if an investigation proceeds.
- E. Upon receipt of the signed agreements to participate in mediation, and all relevant records, the mediator shall schedule the location, date, and time of the mediation. Mediation may be held in person, or telephonically.
- F. The Board staff shall mail a mediation meeting notice to the complainant and respondent at least 20 days before the scheduled mediation.
- G. Mediation sessions shall not be recorded. Statements made during mediation are confidential and shall not be used in any subsequent administrative or legal proceeding. The mediator's notes shall not be part of the complaint file, and shall be kept confidential. The mediator shall not be subpoenaed, or otherwise involved, in any court proceeding, lawsuit, or other legal action involving the parties and the subject matter that was a part of a complaint that was sent to mediation.

- H. Any agreement reached by the complainant and respondent shall not be construed as an admission of any wrongdoing.
- I. If a mediation agreement is reached, the mediator shall put it in writing. The agreement shall be signed by the complainant and the respondent, and is subject to review and approval by the Board.
- J. The Board staff shall monitor the respondent's compliance with the terms of the mediation agreement.
- K. If the respondent fully complies with the terms of a Board approved mediation agreement, the complaint shall be dismissed by Board order.
- L. A complaint shall proceed through the Board's investigative and adjudicative procedures pursuant to A.R.S. Title 32, Chapter 11, Article 3 if:
  1. A complaint is not referred to mediation.
  2. Mediation is declined.
  3. A mediation agreement is not reached.
  4. The Board does not approve a mediation agreement, or
  5. The Board is presented with facts indicating that the respondent may not have complied with the terms of mediation agreement.

**ARTICLE 7. 17. REHEARINGS OF THE BOARD  
REHEARING OR REVIEW**

**R4-11-701. R4-11-1701. Procedure, grounds**

- A. A decision or order of the Board may be vacated and a new hearing granted on motion of the aggrieved party for any of the causes, listed in subsection (C) of this rule, materially affecting his rights. Except as provided in subsection (F), a party who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
- B. Pursuant to A.R.S. § 32-1263.02(E), a preliminary order of the Board may be reviewed or rehearing granted on petition of either party for any of causes, listed in subsection (C) of this rule, materially affecting the rights of either party. A party filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. Other parties or the attorney general may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.
- C. The following are causes for review or rehearing: The Board may grant a rehearing or review of the order for any of the following causes materially affecting a party's rights:
  1. Irregularity in the proceedings of the Board or any order prevailing party, or any order or abuse of discretion, which deprived whereby the moving a party was deprived of a fair hearing;
  2. Misconduct of the Board, its personnel, the informal interviewing officer, the investigative interview panel, the hearing officer, the administrative law judge, or the prevailing party;
  3. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Excessive or insufficient sanctions, penalties;
  5. Error in the admission or rejection of evidence, or in refusing instructions requested, or other errors of law occurring at the hearing or during the progress of the action proceeding;

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- 6. That the findings of fact or decision of the Board is the result of passion or prejudice, is arbitrary, capricious, or an abuse of discretion;
  - 7. That the findings of fact or decision, findings of fact or judgment is not justified by the evidence or is contrary to law; or
  - 8. Newly discovered material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
- D.** The Board may affirm or modify the order or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.
- E.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party or the attorney general may, within 15 days after such service, serve opposing affidavits.
- F.** If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity for rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.
- G.** The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later. If a rehearing or review is granted, the Board shall hold the rehearing or review within 120 days after it issues the order granting the rehearing or review. If a motion for rehearing or review is not considered or reheard within these time limits, the motion is granted.

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

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

**PREAMBLE**

- |   |  |
|---|--|
| <p><b>1. Sections Affected</b></p> <ul style="list-style-type: none"> <li>R9-22-101</li> <li>R9-22-106</li> <li>R9-22-106</li> <li>Article 6</li> <li>Article 6</li> <li>R9-22-601</li> <li>R9-22-601</li> <li>R9-22-602</li> <li>R9-22-602</li> <li>R9-22-602</li> <li>R9-22-603</li> <li>R9-22-603</li> <li>R9-22-603</li> <li>R9-22-604</li> <li>R9-22-604</li> <li>R9-22-605</li> </ul> | <p><b><u>Rulemaking Action</u></b></p> <ul style="list-style-type: none"> <li>Amend</li> <li>Repeal</li> <li>New Section</li> <li>Repeal</li> <li>New Article</li> <li>Repeal</li> <li>New Section</li> <li>Repeal</li> <li>New Section</li> <li>Repeal</li> <li>New Section</li> <li>Repeal</li> <li>New Section</li> <li>Repeal</li> </ul> |
|---|--|
- 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. § 36-2903.01(H)  
 Implementing statute: A.R.S. §§ 36-2903(I), 36-2903.01(B)(4), 36-2904, 36-2906, 36-2907(A), 41-2501(G), 41-2550
- 3. The effective date of the rules:**  
 February 5, 1999
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
 Notice of Rulemaking Docket Opening: 4 A.A.R. 1411, June 19, 1998.  
 Notice of Rulemaking Docket Opening: 4 A.A.R. 2843-2844, October 2, 1998.  
 Notice of Proposed Rulemaking: 4 A.A.R. 3422-3431, October 30, 1998.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
 Name: Cheri Tomlinson, Federal and State Policy Administrator  
 Address: AHCCCSA, Office of Policy Analysis and Coordination  
 801 East Jefferson, Mail Drop 4200

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

The Administration modified 5 Sections (R9-22-601 through R9-22-605) in 9 A.A.C. 22, Article 6 that detail the process used for request for proposals and issuance and protest of contract awards to:

- Comply with recommendations made in the December 2, 1997, 5-Year-Review; and
- Enhance the clarity and conciseness of the rule language.

A new definitions section, R9-22-106, Request for Proposals (RFP) Related Definitions, was also added to conform with the changes made to 9 A.A.C. 22, Article 6.

7. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

None.

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

Not applicable.

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

The following entities will be nominally impacted by and benefit from the changes:

- Contract offerors will benefit because the Administration will not automatically reject an offeror's proposal if the offeror discloses information pertaining to the offeror's proposal to another offeror. Under current rule, AHCCCS shall reject an offeror's proposal in such an instance. This change to the rule language also gives AHCCCS the flexibility to make a judgement in the best interest of the state.

- AHCCCS will also benefit from the change which permits the Administration to open, or not open, proposals publicly. Current rule requires the Administration to open proposals publicly. However, A.R.S. § 41-2501(G) exempts AHCCCS from the State Procurement Code and from the requirement that proposals be opened publicly. The change to the rule language charts a middle course by giving the Administration the flexibility of not opening proposals publicly if the Administration determines it is in the best interest of the state. The impact of the change to the rule language on offerors is mitigated because the Administration will continue to award only contracts that are most advantageous to the state and within the acceptable capitation range.

AHCCCS providers, AHCCCS members, and the general public are not directly affected by the changes because they are not involved in the RFP process.

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**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

	<u>Rule Citation</u>	<u>Change</u>
1.	General	The Administration replaced the current language in R9-22-101 with the language approved by the Governor's Regulatory Review Council on January 5, 1999.
2.	General	The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, and punctuation changes throughout the proposed language.
3.	R9-22-106(2), R9-22-601(C)	The Administration amended the proposed language to make the definition consistent with 42 CFR 455.101.
4.	R9-22-601(B)	The Administration added language to conform with state law. The added language was inadvertently excluded from the proposed rule.
5.	R9-22-601(D)	The Administration amended the proposed language to clarify that the Administration must determine that disclosure is not in the best interest of the state.
6.	R9-22-601(E)	The Administration amended the proposed language to clarify that the disclosure of any information pertaining to the offeror's proposal is prohibited.
7.	R9-22-604(D)	The Administration amended the proposed language to clarify that if an interested party files a protest, the protest shall be filed before the closing date for receipt of initial proposals.
8.	R9-22-604(H)	The Administration amended the proposed language to clarify that the interested party shall file an appeal with both the Director and the procurement officer within 5 days. The Administration also amended the proposed language to clarify the date of receipt by the interested party.
9.	R9-22-604(J)	The Administration amended the proposed language to clarify that the hearing shall not be scheduled if the hearing is dismissed by the Director.

**11. A summary of the principal comments and the agency response to them:**

The Administration received comments from Maricopa Integrated Health System and Lewis and Roca, LLP, who represent Phoenix Health Plan and Health Choice. The Administration conducted a conference call with each stakeholder to discuss the Administration's responses to the comments submitted.

Maricopa Integrated Health System commented on the evaluation and rejection of a proposal. Lewis and Roca, LLP commented on definitions of "affiliated corporate organization" and "responsible offeror", opening proposals publicly, proprietary information, disclosure of terms of a proposal, evaluating a proposal, and proposal protests and appeals. The Administration amended the proposed rule language to make the definition of "affiliated corporate organization" consistent with 42 CFR 455.101. The Administration also amended R9-22-604(D) to provide clarification regarding the filing of a protest.

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

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

42 CFR 455.101, September 30, 1986, incorporated at R9-22-106(2) and R9-22-601(C)

42 U.S.C. 1396u-2(d)(3), August 5, 1997, incorporated at R9-22-601(A)

**14. Was this rule previously adopted as an emergency rule? If so, please indicate the Register citation:**  
No.

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

**TITLE 9. HEALTH SERVICES**

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

**ARTICLE 1. DEFINITIONS**

**ARTICLE 6. CONTRACTING FOR HOSPITALIZATION  
AND MEDICAL CARE SERVICES**

Section

R9-22-101. Location of Definitions

R9-22-106. Reserved

R9-22-106. Request for Proposals (RFP) Related Definitions

R9-22-601. Definitions

R9-22-602. General provisions

R9-22-603. Request for Proposals (RFP); contract award

R9-22-604. Contract records

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R9-22-605. Contract or Proposal Protests; Appeals

**ARTICLE 6. REQUEST FOR PROPOSALS (RFP)**

- R9-22-601. General Provisions
- R9-22-602. Request for Proposals (RFP); Contract Award
- R9-22-603. Contract Records
- R9-22-604. Contract or Proposal Protests; Appeals

**ARTICLE 1. DEFINITIONS**

A. Location of definitions. Definitions applicable to Chapter 22 are found in the following:

Definition	Section or Citation	
1. "210"	R9-22-114	
2. "1931"	R9-22-114	
3. "1-time income"	R9-22-116	
4. "1st-party liability"	R9-22-110	
5. "3-month income period"	R9-22-116	
6. "3rd-party"	R9-22-110	
7. "3rd-party liability"	R9-22-110	
8. "Accommodation"	R9-22-107	
9. "Act"	R9-22-114	
10. "Acute mental health services"	R9-22-112	
11. "Adequate notice"	R9-22-114	
12. "Administration"	R9-22-114	
13. "Administration"	R9-22-106	
13-14. "Adverse action"	R9-22-114	
14-15. "AEC"	R9-22-117	
16. "Affiliated corporate organization"	R9-22-106	
15-17. "Aged"	R9-22-115	
16-18. "Aggregate"	R9-22-107	
17-19. "AHCCCS"	R9-22-101	
18-20. "AHCCCS hearing officer"	R9-22-108	
19-21. "AHCCCS inpatient hospital day or days of care"	R9-22-107	
20-22. "Ambulance"	R9-22-102	
21-23. "Ancillary department"	R9-22-107	
22-24. "Annual enrollment choice"	R9-22-117	
23-25. "Appeal"	R9-22-108	
24-26. "Appellant"	R9-22-114	
25-27. "Applicant"	R9-22-101	
26-28. "Application"	R9-22-101	
27-29. "Assignment"	R9-22-101	
28-30. "Assistance unit"	R9-22-114	
29-31. "Authorized representative"	R9-22-114	
30-32. "Auto-assignment algorithm"	R9-22-117	
31-33. "Baby Arizona"	R9-22-114	
32-34. "BHS"	R9-22-114	
33-35. "Billed charges"	R9-22-107	
34-36. "Blind"	R9-22-115	
35-37. "Bona fide funeral agreement"	R9-22-114	
36-38. "Burial plot"	R9-22-114	
37-39. "Capital costs"	R9-22-107	
38-40. "Capped fee-for-service"	R9-22-101	
39-41. "Caretaker relative"	R9-22-114	
40-42. "Case record"	R9-22-101	
41-43. "Cash assistance"	R9-22-114	
42-44. "Categorically eligible"	A.R.S. § 36-2901(4)(b) and 36-2934	
43-45. "Certification error"	A.R.S. § 36-2905.01	
44-46. "Certification period"	R9-22-115 and R9-22-116	
45-47. "Child welfare agency"	R9-22-114	
46-48. "Clean claim"	A.R.S. § 36-2904	
47-49. "CMDP"	R9-22-117	
48-50. "Continuous stay"	R9-22-101	
49-51. "Contract"	R9-22-101	
50-52. "Contractor"	R9-22-101	
51-53. "Contractor of record"	R9-22-101	
52-54. "Copayment"	R9-22-107	
53-55. "Cost-to-charge ratio"	R9-22-107	
54-56. "Countable income"	R9-22-116	
55-57. "County eligibility staff"	R9-22-116	
56-58. "Covered charges"	R9-22-107	
57-59. "Covered services"	R9-22-102	
58-60. "CPT"	R9-22-107	
59-61. "CRS"	R9-22-114	
60-62. "Date of determination"	R9-22-116	
61-63. "Date of discontinuance"	R9-22-116	
62-64. "Date of enrollment action"	R9-22-117	
63-65. "Day"	R9-22-101	
64-66. "DCSE"	R9-22-114	
65-67. "Deductible medical expense"	R9-22-116	
66-68. "Deemed application date"	R9-22-116	
67-69. "Dentures"	R9-22-102	
68-70. "Department"	R9-22-114	
69-71. "Dependent child"	R9-22-114 and R9-22-116	
70-72. "DES"	R9-22-101	
71-73. "Determination"	R9-22-116	
72-74. "Diagnostic services"	R9-22-102	
73-75. "Disabled"	R9-22-115	
74-76. "Discontinuance"	R9-22-116	
77. "Discussions"	R9-22-106	
75-78. "Disenrollment"	R9-22-117	
76-79. "District Medical Consultant"	R9-22-114	
77-80. "DME"	R9-22-102	
78-81. "DRI inflation factor"	R9-22-107	
79-82. "E.P.S.D.T. services"	R9-22-102	
80-83. "EAC"	R9-22-101	
81-84. "Earned income"	R9-22-116	
82-85. "Educational income"	R9-22-116	
83-86. "ELIC"	R9-22-101	
84-87. "Eligibility determination date"	R9-22-114	
85-88. "Eligible assistance children" A.R.S. § 36-2905.03(B)		
86-89. "Eligible applicant" A.R.S. § 36-2901(4)		
87-90. "Eligible low income children" A.R.S. § 36-2905.03(C) and (D)		
88-91. "Emancipated minor"	R9-22-116	
89-92. "Emergency medical condition" 42 U.S.C. 1396b(v)		
90-93. "Emergency medical services"	R9-22-102	
91-94. "Encounter"	R9-22-107	
92-95. "Enrollment"	R9-22-117	
93-96. "Enumeration"	R9-22-101	
94-97. "Equity"	R9-22-101	
95-98. "Expressly emancipated minor"	R9-22-116	
96-99. "FAA" or "Family Assistance Administration"	R9-22-114	
97-100. "Facility"	R9-22-101	
98-101. "Factor"	R9-22-101	
99-102. "FBR"	R9-22-101	
100-104. "Federal Benefit Rate"	R9-22-101	
101-105. "Federal emergency services program"	R9-22-101	
102-106. "FESP"	R9-22-101	
103-107. "Foster care maintenance payment"	R9-22-114	
104-108. "Foster child"	R9-22-114	
105-109. "FPL"	R9-22-114	
106-110. "FQHC"	R9-22-101	
107-111. "Grievance"	R9-22-108	
108-112. "GSA"	R9-22-101	
109-113. "Guardian"	R9-22-116	
110-114. "Head-of-household"	R9-22-116	

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<del>111.</del> <u>115.</u> "Hearing aid"	R9-22-102	<del>171.</del> <u>178.</u> "Redetermination"	R9-22-116
<del>112.</del> <u>116.</u> "Home health services"	R9-22-102	<del>172.</del> <u>179.</u> "Referral"	R9-22-101
<del>113.</del> <u>117.</u> "Homebound"	R9-22-114	<del>173.</del> <u>180.</u> "Rehabilitation services"	R9-22-102
<del>114.</del> <u>118.</u> "Hospital"	R9-22-101	<del>174.</del> <u>181.</u> "Reinsurance"	R9-22-107
<del>115.</del> <u>119.</u> "Hospitalized"	R9-22-116	<del>175.</del> <u>182.</u> "Resources"	R9-22-114 and R9-22-116
<del>116.</del> <u>120.</u> "ICU"	R9-22-107	<del>176.</del> <u>183.</u> "Respiratory therapy"	R9-22-102
<del>117.</del> <u>121.</u> "IHS"	R9-22-117	<del>184.</del> <u>184.</u> "Responsible offeror"	R9-22-106
<del>118.</del> <u>122.</u> "Income"	R9-22-114 and R9-22-116	<del>185.</del> <u>185.</u> "Responsive offeror"	R9-22-106
<del>119.</del> <u>123.</u> "Income-in-kind"	R9-22-116	<del>177.</del> <u>186.</u> "Review"	R9-22-114
<del>120.</del> <u>124.</u> "Indigent"	A.R.S. § 11-297	<del>178.</del> <u>187.</u> "RFP"	R9-22-105 and R9-22-106
<del>121.</del> <u>125.</u> "Inmate of a public institution"	42 CFR 435.1009	<del>179.</del> <u>188.</u> "Scope of services"	R9-22-102
<u>126.</u> "Interested party"	R9-22-106	<del>180.</del> <u>189.</u> "SDAD"	R9-22-107
<del>122.</del> <u>127.</u> "Interim change"	R9-22-116	<del>181.</del> <u>190.</u> "Separate property"	A.R.S. §25-213
<del>123.</del> <u>128.</u> "JTPA" or "Job Training Partnership Act"	R9-22-114	<del>182.</del> <u>191.</u> "Service location"	R9-22-101
<del>124.</del> <u>129.</u> "License or licensure"	R9-22-101	<del>183.</del> <u>192.</u> "Service site"	R9-22-101
<del>125.</del> <u>130.</u> "Liquid assets"	R9-22-114 and R9-22-116	<del>184.</del> <u>193.</u> "SESP"	R9-22-101
<del>126.</del> <u>131.</u> "Liquid resources"	R9-22-116	<del>185.</del> <u>194.</u> "S.O.B.R.A."	R9-22-101
<del>127.</del> <u>132.</u> "Lump-sum income"	R9-22-116	<del>186.</del> <u>195.</u> "Specialist"	R9-22-102
<del>128.</del> <u>133.</u> "Mailing date"	R9-22-114	<del>187.</del> <u>196.</u> "Specified relative"	R9-22-114 and R9-22-116
<del>129.</del> <u>134.</u> "Medical education costs"	R9-22-107	<del>188.</del> <u>197.</u> "Speech therapy"	R9-22-102
<del>130.</del> <u>135.</u> "Medical record"	R9-22-101	<del>189.</del> <u>198.</u> "Spentthrift restriction"	R9-22-114
<del>131.</del> <u>136.</u> "Medical review"	R9-22-107	<del>190.</del> <u>199.</u> "Spouse"	R9-22-101
<del>132.</del> <u>137.</u> "Medical services"	R9-22-101	<del>191.</del> <u>200.</u> "SSA"	P.L. 103-296, Title I
<del>133.</del> <u>138.</u> "Medical supplies"	R9-22-102	<del>192.</del> <u>201.</u> "SSI"	R9-22-101
<del>134.</del> <u>139.</u> "Medical support"	R9-22-114	<del>193.</del> <u>202.</u> "SSN"	R9-22-101
<del>135.</del> <u>140.</u> "Medically necessary"	R9-22-101	<del>194.</del> <u>203.</u> "State alien"	R9-22-101
<del>136.</del> <u>141.</u> "Medicare claim"	R9-22-107	<del>195.</del> <u>204.</u> "State emergency services program"	R9-22-101
<del>137.</del> <u>142.</u> "Medicare HMO"	R9-22-101	<del>196.</del> <u>205.</u> "Sterilization"	R9-22-102
<del>138.</del> <u>143.</u> "MI/MN"	A.R.S. § 36-2901(4)(a) and (c)	<del>197.</del> <u>206.</u> "Subcontract"	R9-22-101
<del>139.</del> <u>144.</u> "Minor parent"	R9-22-114	<del>198.</del> <u>207.</u> "SVES" or "State Verification and Exchange System"	R9-22-114
<del>140.</del> <u>145.</u> "Month of determination"	R9-22-116	<del>199.</del> <u>208.</u> "Tier"	R9-22-107
<del>141.</del> <u>146.</u> "New hospital"	R9-22-107	<del>200.</del> <u>209.</u> "Tiered per diem"	R9-22-107
<del>142.</del> <u>147.</u> "NICU"	R9-22-107	<del>201.</del> <u>210.</u> "Title IV-A"	R9-22-114
<del>143.</del> <u>148.</u> "Noncontracting provider"	A.R.S. § 36-2931	<del>202.</del> <u>211.</u> "Title IV-D"	R9-22-114
<del>144.</del> <u>149.</u> "Nonliquid resources"	R9-22-116	<del>203.</del> <u>212.</u> "Title IV-E"	R9-22-114
<del>145.</del> <u>150.</u> "Nonparent caretaker relative"	R9-22-114	<del>204.</del> <u>213.</u> "TMA"	R9-22-114
<del>146.</del> <u>151.</u> "Nursing facility"	42 U.S.C. 1396r(a)	<del>205.</del> <u>214.</u> "Total inpatient hospital days"	R9-22-107
<del>147.</del> <u>152.</u> "Occupational therapy"	R9-22-102	<del>206.</del> <u>215.</u> "Unearned income"	R9-22-116
<del>153.</del> <u>153.</u> "Offeror"	R9-22-106	<del>207.</del> <u>216.</u> "Utilization management"	R9-22-105
<del>148.</del> <u>154.</u> "Operating costs"	R9-22-107	<b>B.</b> General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:	
<del>149.</del> <u>155.</u> "Outlier"	R9-22-107	1. "AHCCCS" means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to an eligible person.	
<del>150.</del> <u>156.</u> "Outpatient hospital service"	R9-22-107	2. "Applicant" means a person who submits or whose representative submits, a written, signed, and dated application for AHCCCS benefits that has not been approved or denied.	
<del>151.</del> <u>157.</u> "Ownership change"	R9-22-107	3. "Application" means an official request for medical assistance made under this Chapter.	
<del>152.</del> <u>158.</u> "Peer group"	R9-22-107	4. "Assignment" means enrollment of an eligible person with a contractor by the Administration.	
<del>153.</del> <u>159.</u> "Pharmaceutical service"	R9-22-102	5. "Capped fee-for-service" means the payment mechanism by which providers of care are reimbursed upon submission of valid claims for specific AHCCCS covered services and equipment provided to eligible applicants. Payments are made in accordance with an upper, or capped, limit established by the Director.	
<del>154.</del> <u>160.</u> "Physical therapy"	R9-22-102	6. "Case record" means the file and all documents in the file that are used to establish eligibility.	
<del>155.</del> <u>161.</u> "Physician"	R9-22-102		
<del>156.</del> <u>162.</u> "Practitioner"	R9-22-102		
<del>157.</del> <u>163.</u> "Pre-enrollment process"	R9-22-114		
<del>158.</del> <u>164.</u> "Prescription"	R9-22-102		
<del>159.</del> <u>165.</u> "Primary care provider"	R9-22-102		
<del>160.</del> <u>166.</u> "Primary care provider services"	R9-22-102		
<del>161.</del> <u>167.</u> "Prior authorization"	R9-22-102		
<del>162.</del> <u>168.</u> "Private duty nursing services"	R9-22-102		
<del>169.</del> <u>169.</u> "Proposal"	R9-22-106		
<del>163.</del> <u>170.</u> "Proposal of discontinuance"	R9-22-116		
<del>164.</del> <u>171.</u> "Prospective rate year"	R9-22-107		
<del>165.</del> <u>172.</u> "Prospective rates"	R9-22-107		
<del>166.</del> <u>173.</u> "Public assistance"	R9-22-116		
<del>167.</del> <u>174.</u> "Quality management"	R9-22-105		
<del>168.</del> <u>175.</u> "Radiology"	R9-22-102		
<del>169.</del> <u>176.</u> "Rebasing"	R9-22-107		
<del>170.</del> <u>177.</u> "Recipient"	R9-22-114		

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7. "Categorically eligible" means a person who is eligible as defined by A.R.S. §§ 36-2901(4)(b) and 36-2934.
8. "Continuous stay" means the period of time during which an eligible person receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.
9. "Contract" means a written agreement entered into between a person, organization, or other entity and the Administration, to provide health care services to members under A.R.S. Title 36, Chapter 29, and these rules.
10. "Contractor" means a person, organization, or entity that agrees through a direct contracting relationship with the Administration, to provide goods and services specified by the contract under the requirements of the contract and these rules.
11. "Contractor of record" means the organization or entity in which a person is enrolled for the provision of AHC-CCS services.
12. "Day" means a calendar day unless otherwise specified in the text.
13. "DES" means the Department of Economic Security.
14. "EAC" means eligible assistance children.
15. "ELIC" means eligible low income children.
16. "Eligible assistance children" means the children defined by A.R.S. § 36-2905.03(B).
17. "Eligible low income children" means the children defined by A.R.S. § 36-2905.03(C) and (D).
18. "Eligible applicant" means the applicant defined in A.R.S. § 36-2901(4).
19. "Enumeration" means the assignment of a specific 9-digit identification number to a person by the Social Security Administration.
20. "Equity" means the county assessor full cash or market value of a resource minus valid liens, encumbrances, or both.
21. "Facility" means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution, under A.R.S. Title 36, Chapter 4, to provide medical services, nursing services, or other health care or health-related services.
22. "Factor" means an organization, collection agency, service bureau, or person who advances money to a provider for accounts receivable that the provider assigns, sells, or otherwise transfers, including transfers through the use of a power of attorney, to the organization, collection agency, service bureau, or person that receives an added fee or a deduction of a portion of the face value of the accounts receivable in return for the advanced money. The term "factor" does not include business representatives, such as billing agents or accounting firms described within these rules, or health care institutions.
23. "FBR" means Federal Benefit Rate, defined in R9-22-101(B)(24).
24. "Federal Benefit Rate" means the maximum monthly Supplemental Security Income payment rate for an eligible person or married couple.
25. "Federal emergency services program" means a program designed to provide emergency medical services covered under 42 U.S.C. 1396b(v), to treat an emergency medical condition for a categorically eligible person who is determined eligible under A.R.S. § 36-2903.03.
26. "FESP" means federal emergency services program.
27. "FQHC" means federally qualified health center.
28. "GSA" means a geographical service area designated by the Administration within which a contractor of record provides, directly or through subcontract, covered health care services to members enrolled with that contractor of record.
29. "Hospital" means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined to meet the requirements of certification.
30. "Indigent" means meeting eligibility criteria under A.R.S. § 11-297.
31. "Inmate of a public institution" means a person defined by 42 CFR 435.1009.
32. "License" or "licensure" means a nontransferable authorization that is based on established standards in law, is issued by a state or county regulatory agency or board, and allows a health care provider to render a health care service lawfully.
33. "Medical record" means all documents that relate to medical and behavioral health services provided to an eligible person, a physician, or other licensed practitioner of the healing arts or member and that are kept at the site of the provider.
34. "Medical services" means health care services provided to an eligible person by a physician, practitioner, dentist, or by health professionals and technical personnel under the direction of a physician, practitioner, dentist.
35. "Medically necessary" means covered services provided by a physician or other licensed practitioner of the healing arts and within the scope of practice under state law to:
  - a. Prevent disease, disability, and other adverse health conditions or their progression; or
  - b. Prolong life.
36. "Medicare HMO" means a health maintenance organization that has a current contract with the Health Care Financing Administration (HCFA) for participation in the Medicare program under 42 CFR 417(L).
37. "MI/MN" means medically indigent and medically needy defined in A.R.S. § 36-2901(4)(a) and (c).
38. "Nursing facility" means a nursing facility defined in 42 U.S.C. 1396r(a).
39. "Noncontracting provider" means the provider defined in A.R.S. § 36-2931.
40. "Referral" means the process by which an eligible person is directed by a primary care provider or attending physician to another appropriate provider or resource for diagnosis or treatment.
41. "Separate property" means property defined in A.R.S. § 25-213.
42. "Service location" means any location at which a member obtains any health care service provided by the contractor of record under the terms of a contract.
43. "Service site" means a location designated by the contractor of record as the location at which a person is to receive health care services.
44. "SESP" means state emergency services program.
45. "S.O.B.R.A." means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(ii)(IX), July 1, 1988.

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46. "Spouse" means the husband or wife who has entered into a contract of marriage, recognized as valid by Arizona.
47. "SSA" means Social Security Administration defined in P.L. 103-296, Title I.
48. "SSI" means Supplemental Security Income under Title XVI of the Social Security Act, as amended.
49. "SSN" means social security number.
50. "State alien" means an unqualified alien described in A.R.S. § 36-2903.03(C).
51. "State emergency services program" means a program designed to provide emergency medical services identified as covered under R9-22-217 to treat an emergency medical condition for a person who is determined eligible under A.R.S. § 36-2905.05.
52. "Subcontract" means an agreement entered into by a contractor with any of the following:
  - a. A provider of health care services who agrees to furnish covered services to members;
  - b. A marketing organization; or
  - c. Any other organization or person who agrees to perform any administrative function or service for the contractor specifically related to securing or fulfilling the contractor's obligations to the Administration under the terms of a contract.

**R9-22-106. Reserved**

**R9-22-106. Request for Proposals (RFP) Related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. "Administration" means the Arizona Health Care Cost Containment System Administration, its agents, employees, and designated representatives.
2. "Affiliated corporate organization" means any organization that has ownership or management interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation relationships, 42 CFR 455.101, September 30, 1986, is incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments.
3. "Discussions" means an oral or written exchange of information or any form of negotiation.
4. "Interested party" means an actual or prospective offeror whose economic interest may be directly affected by the issuance of an RFP, the award of a contract, or by the failure to award a contract.
5. "Offeror" means a person or other entity that submits a proposal to the Administration in response to an RFP.
6. "Proposal" means all documents, including best and final offers, submitted by an offeror in response to an RFP by the Administration.
7. "Responsible offeror" means a person or entity who has the capability to perform the contract requirements and which will ensure good faith performance.
8. "Responsive offeror" means a person or entity that submits a proposal that conforms in all material respects to an RFP.
9. "RFP" means Request for Proposals, including all documents, whether attached or incorporated by reference, which are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.

**ARTICLE 6. CONTRACTING FOR HOSPITALIZATION  
AND MEDICAL CARE SERVICES**

**R9-22-601. Definitions**

The terms used in the text of this Article have the following meaning:

1. "Administration" means the Arizona Health Care Cost Containment System Administration, its agents, employees and designated representatives.
2. "Affiliated corporate organization" means any organization that has ownership or management interests in an offeror including, but not limited to, parent and subsidiary corporation relationships.
3. "Discussions" means an oral or written exchange of information or any form of negotiation.
4. "Interested party" means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a Request for Proposals, the award of a contract or by the failure to award a contract. Whether an actual or prospective offeror has an economic interest will depend upon the circumstances of each case.
5. "Offeror" means a person or other entity which may submit a proposal to the Administration in response to a Request for Proposals.
6. "Request for Proposals (RFP)" means all documents, whether attached or incorporated by reference, which are used by the Administration for soliciting a proposal pursuant to this Article. This term also encompasses all supplements or amendments to the original RFP as defined in this paragraph.
7. "Proposal" means all documents submitted by an offeror in response to a Request for Proposals by the Administration.
8. "Qualified offer" means an offer submitted by a responsible and responsive offeror.
9. "Responsible offeror" means a person or entity who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
10. "Responsive offeror" means a person or entity who submits a proposal which conforms in all

**R9-22-602. General provisions**

- A. Except as otherwise provided by law, this Article applies to the expenditure of all public monies, including federal assistance monies, by the Administration for hospitalization and medical care services.
- B. A Request for Proposals may be cancelled or any and all proposals may be rejected in whole or in part as may be specified in the RFP if it is deemed by the Director to be in the best interest of the state. The reasons for cancellation or rejection shall be made part of the contract file.
- C. The Director has the authority and the sole discretion to conduct investigations of persons who have ownership or management interests in corporate offerors and affiliated corporate organizations of the offeror.
- D. Offerors shall have no right to damages or basis for any claims against the state, its employees, or agents, arising out of any action by the Administration pursuant to the provisions of subsection (B) of this Section.
- E. Proposals shall be opened publicly. The name of each offeror shall be read publicly and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of discussions. The proposals shall be open

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for public inspection after contract award, unless upon an offeror's written request for nondisclosure, the Director makes a determination that disclosure is not in the best interests of the state.

- F. Failure by an offeror to supply satisfactory information as requested by the Administration is sufficient basis for the rejection of any proposal by the Administration.
- G. Disclosure by an offeror of the terms of its proposal to another offeror or to any other person prior to contract award is prohibited and shall be grounds for rejecting a proposal.

**R9-22-603. Request for Proposals (RFP), contract award**

A. RFP content. The following items shall be included in a Request for Proposals:

- 1. The instructions and information to offerors concerning the proposal submission requirements, including:
  - a. The time and date set for the proposal opening;
  - b. The address of the office at which proposals are to be received;
  - c. The period during which the proposal shall remain open; and any other special information;
- 2. The service description, covered populations, geographic coverage, specifications and a delivery or performance schedule;
- 3. The contract terms and conditions, including bonding or other security requirements, if applicable;
- 4. The factors to be used in the evaluation;
- 5. The location of and method for obtaining documents that are incorporated by reference;
- 6. The requirement that the offeror acknowledge receipt of all amendments issued by the Administration;
- 7. The type of services required and a description of the work involved;
- 8. The type of contract to be used and a copy of a proposed contract form or provisions;
- 9. The estimated length of time during which service will be required;
- 10. A requirement for cost or pricing data;
- 11. The minimum information that the proposal shall contain; and
- 12. A provision requiring that the offeror certify that the submission of the proposal does not involve collusion or other anticompetitive practices.

B. Evaluation of proposals.

- 1. As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the Request for Proposals. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- 2. If discussions are conducted pursuant to paragraph (1) of this subsection, the Administration may issue a written request for best and final offers. The request may set forth the date, time and place for the submission of best and final offers. Best and final offers may be requested only once, unless the Administration makes a determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and final offers may inform the offerors

that if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

- 3. Proposal evaluation shall be based on the evaluation factors set forth in the Request for Proposals.
- 4. Offerors whose proposals or offers are rejected shall be notified in writing of the rejection. The rejection notice shall be made part of the contract file and public record.
- C. Contract award. Taking into consideration the evaluation factors set forth in the Request for Proposals the contract award shall be made to the responsible and responsive offerors with the lowest qualified offers which are determined to be most advantageous to the state. The Administration may award multiple contracts, to the extent possible, for each county in the state for the purpose of limiting the number of high risk persons which may be included in any contract. The contract file shall contain the basis on which the award is made.

**R9-22-604. Contract records**

All contract records shall be retained for a period of five years and disposed of in accordance with A.R.S. § 41-2550.

**R9-22-605. Contract or Proposal Protests, Appeals**

- A. Resolution of proposal protests. The procurement officer issuing the Request for Proposals shall have the authority to resolve proposal protests. Appeals from the decisions of the procurement officer may be made to the Director pursuant to this Section.
- B. Filing of a protest.
  - 1. Any interested party may protest a Request for Proposals issued by the Administration, or the proposed award or the award of an AHCCCS provider contract by filing a protest with the procurement officer. This Section shall not apply to grievances related to contract performance. Such grievances shall be governed by R9-22-804.
  - 2. Content of protest. The protest shall be in writing and shall include the following information:
    - a. The name, address and telephone number of the protester;
    - b. The signature of the protester or its representative;
    - c. Identification of the Request for Proposals or contract number;
    - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
    - e. The relief requested.
- C. Time for filing protests.
  - 1. Protests concerning improprieties in a Request for Proposals. Protests based upon alleged improprieties in the Request for Proposals that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
  - 2. In cases other than those covered in paragraph (1) of this subsection, protests shall be filed within ten days after the protester knows or should have known the basis of the protest, whichever is earlier.
- D. Stay of procurements during the protest. If a protest is filed before the award of a contract, the award may be made, unless the Director makes a written determination that there is a reasonable probability that the protest will be sustained and the stay of award of the contract is not contrary to the best interests of the state.
- E. Decision by the procurement officer.
  - 1. The procurement officer shall issue a written decision within 14 days after a protest has been filed. The deci-

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- sion shall contain an explanation of the basis of the decision.
2. The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
  3. The time limit for decisions set forth in paragraph (1) of this subsection may be extended by the Director for good cause for a reasonable time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
  4. If the procurement officer fails to issue a decision within the time limits set forth in paragraph (1) or (3) of this subsection, the protester may proceed as if the procurement officer has issued an adverse decision.
- F. Remedies.**
1. If the procurement officer sustains the protest in whole or part and determines that the Request for Proposals, proposed contract award, or contract award does not comply with applicable statutes and rules, the officer shall implement an appropriate remedy.
  2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the government, the urgency of the procurement and the impact of the relief on the agency's mission.
  3. An appropriate remedy may include one or more of the following:
    - a. Decline to exercise an option to renew under the contract;
    - b. Terminate the contract;
    - c. Reissue the Request for Proposals;
    - d. Issue a new Request for Proposals;
    - e. Award a contract consistent with procurement statutes and rules; or
    - f. Such other relief as is determined necessary to ensure compliance with applicable statutes and regulations.
- G. Appeals to the Director.**
1. An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
  2. Content of appeal. The appeal shall contain:
    - a. The information set forth in subsection (B) of this Section;
    - b. A copy of the decision of the procurement officer; and
    - c. The precise factual or legal error in the decision of the procurement officer from which the appeal is taken.
- H. Stay of procurement during appeal.** If an appeal is filed before an award of contract and the award of the contract was stayed by the procurement officer pursuant to subsection (D) of this Section, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.
- I. Dismissal before hearing.** The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:
1. The appeal does not state a valid basis for protest;
  2. The appeal is untimely pursuant to subsection (G) of this Section; or
  3. The appeal is moot.
- J. Hearing.** Hearings on appeals of proposal protest decisions shall be conducted as contested cases pursuant to Article 8 and the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, Article 6).
- K. Remedies.** If the Director sustains the appeal in whole or part and determines that a Request for Proposals, proposed award, or award does not comply with procurement statutes and rules, remedies shall be implemented pursuant to subsection (F) of this Section.
- L. Hearing procedures.**
1. If a hearing is required or permitted under this Section, the Director shall appoint a hearing officer.
  2. If a hearing is required or permitted the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.
  3. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
  4. The hearing officer may:
    - a. Hold pre-hearing conferences to settle, simplify, or identify the 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 on matters pending before such officer;
    - 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 person failing to obey an order under these procedures, which may include:
      - i. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
      - ii. Excluding all testimony of an unresponsive or evasive witness; and
      - iii. Expelling the person 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.
  5. A transcribed record of the hearing shall be made available at cost to the requesting party.
- M. Recommendation by the hearing officer.**
1. The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
  2. The Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may

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- remand the matter to the hearing officer with instructions, or make any other appropriate disposition.
- N. Final decision by the Director. A decision by the Director shall be final. The decision shall be sent to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten days of receipt request a rehearing.
- O. Rehearing of Director's decision.
1. Any party, including a procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds:
    - a. The request for rehearing shall be filed with the Director within ten days after receipt of the decision.
    - b. The request shall be clearly designated as a "Request for Rehearing".
  2. The Director or hearing officer may require the filing of written briefs and may provide for oral argument.
  3. A rehearing of the decision may be granted for any of the following causes:
    - a. Irregularity in the proceedings or an abuse of discretion by the Director depriving the requesting party of a fair hearing;
    - b. Misconduct of the Director, his staff or the hearing officer or any party;
    - c. Accident or surprise that could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
    - e. Excessive or insufficient penalties;
    - f. Error in the admission or rejection of evidence or other error of law occurring at the hearing;
    - g. A showing that the decision is not justified by the evidence or is contract to law.
  4. The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.
  5. The Director, within the time for filing a request for rehearing under this subsection, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.
- P. Failure to exhaust administrative remedies. Failure to submit a protest and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking a judicial review.

**ARTICLE 6. REQUEST FOR PROPOSALS (RFP)**

**R9-22-601. General Provisions**

- A. This Article applies to the expenditure of all public monies by the Administration for covered services under 9 A.A.C. 22, Article 2 and 9 A.A.C. 22, Article 12 except as otherwise provided by law. The Administration shall ensure that it has conflict of interest safeguards for officers and employees of the state with responsibilities relating to contracts specified in 42 U.S.C. 1396u-2(d)(3), August 5, 1997, incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments.

- B. If it is deemed by the Administration to be in the best interest of the state, the Administration may cancel an RFP or reject any and all proposals, in whole or in part, as specified in the RFP. The reasons for cancellation or rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if an RFP is cancelled or if a proposal is rejected in whole or in part.
- C. The Administration may conduct an investigation of a person or organization who has ownership or management interests defined within 42 CFR 455.101, in corporate offerors and affiliated corporate organizations of an offeror. 42 CFR 455.101, September 30, 1986, is incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments.
- D. A proposal may be opened publicly and the name of the offeror announced and recorded. All other information contained in a proposal shall be confidential. A proposal shall be open for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
- E. Failure by an offeror to supply information requested by the Administration is sufficient basis for rejection of the offeror's proposal by the Administration.
- F. Disclosure of information pertaining to an offeror's proposal by the offeror to any other offeror or person prior to contract award is prohibited and may be grounds for rejecting a proposal.

**R9-22-602. Request for Proposals (RFP): Contract Award**

- A. RFP content. The following items shall be included in an RFP:
1. The instructions and information to an offeror concerning the proposal submission requirements, including:
    - a. The deadline for submitting a proposal.
    - b. The address of the office at which a proposal is to be received.
    - c. The period during which the RFP shall remain open, and
    - d. Any special instructions and information.
  2. The service description, covered populations, geographic coverage, and a delivery or performance schedule.
  3. The contract terms and conditions, including bonding or other security requirements, if applicable.
  4. The factors used to evaluate a proposal.
  5. The location of and method of obtaining documents that are incorporated by reference.
  6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration.
  7. The type of contract to be used and a copy of a proposed contract form or provisions.
  8. The length of the contract service.
  9. A requirement for cost or pricing data.
  10. The minimum RFP requirements; and
  11. A provision requiring an offeror to certify that the submission of a proposal does not involve collusion or other anti-competitive practices.
- B. Evaluation of a proposal.
1. The Administration shall evaluate a proposal based on the evaluation factors listed in the RFP.
  2. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with

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respect to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.

3. The Administration may issue a written request for best and final offers. The request shall state the date, time, and place for the submission of best and final offers.
  4. Best and final offers may be requested only once unless the Administration determines that it is advantageous to the state to request additional best and final offers. The written request for best and final offers shall inform the offeror that if the offeror does not submit a notice of withdrawal or a best and final offer, the immediate previous offer shall be construed as the offeror's best and final offer.
  5. The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and public record.
- C. Contract award. The Administration shall award the contract to the responsible and responsive offeror whose proposal is deemed most advantageous to the state. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

**R9-22-603. Contract Records**

All contract records shall be retained for a period of 5 years and disposed of under A.R.S. § 41-2550.

**R9-22-604. Contract or Proposal Protests; Appeals**

- A. Grievances related to contract performance. This Section shall not apply to grievances related to contract performance. Any contract performance grievance shall be governed by R9-22-804.
- B. Resolution of a proposal protest. The procurement officer issuing an RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.
- C. Filing of a protest.
1. An interested party may file a protest with the procurement officer regarding:
    - a. An RFP issued by the Administration;
    - b. A proposed award; or
    - c. An award of a contract.
  2. The protest shall be in writing and shall include the following information:
    - a. The name, address, and telephone number of the protester;
    - b. The signature of the protester or protester's representative;
    - c. Identification of an RFP or contract number;
    - d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
    - e. The relief requested.
- D. Time for filing a protest.
1. A protest based on alleged improprieties in an RFP shall be filed before the due date for receipt of proposals.
  2. A protest alleging improprieties that do not exist in the original RFP but are subsequently incorporated into the RFP before the due date for receipt of proposals shall be filed prior to the amended due date for receipt of proposals.
  3. In cases other than those covered in subsections (D)(1) and (D)(2), a protest shall be filed within 10 days after

the protester knows or should have known the basis of the protest.

- E. Stay of procurements during the protest. If a protest is filed before the contract award, the procurement officer may issue a written stay of the contract award if:
1. A reasonable probability exists that the protest will be sustained, and
  2. The stay of the contract award is not contrary to the best interest of the state.
- F. Decision by the procurement officer.
1. The procurement officer shall issue a written decision within 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
  2. The procurement officer shall furnish a copy of the decision to the protester by:
    - a. Certified mail, return receipt requested; or
    - b. Any method that provides evidence of receipt.
  3. The Administration may extend, for good cause, the time-limit for decisions in subsection (F)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
  4. If the procurement officer fails to issue a decision within the time-limits in subsection (F)(1) or (F)(3) the protester may proceed as if the procurement officer issued an adverse decision.
- G. Remedies.
1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
  2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
    - a. Seriousness of the procurement deficiency,
    - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
    - c. Good faith of the parties,
    - d. Extent of performance,
    - e. Costs to the state, and
    - f. Urgency of the procurement.
  3. An appropriate remedy may include 1 or more of the following:
    - a. Terminate the contract;
    - b. Reissue the RFP;
    - c. Issue a new RFP;
    - d. Award a contract consistent with statutes, rules, and the terms of the RFP; or
    - e. Any relief determined necessary to ensure compliance with applicable statutes and regulations.
- H. Appeals to the Director.
1. An interested party shall file an appeal from a decision by the procurement officer with both the Director and the procurement officer within 5 days from the date the decision is received. The date the decision is received shall be determined according to R9-22-604 (F)(2).
  2. The appeal shall contain:
    - a. The information required in subsection (C)(2),
    - b. A copy of the decision of the procurement officer,
    - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and

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- d. A request for hearing unless the interested party requests that the Director's decision be based solely upon the contract record.
- I. Stay of contract award during an appeal to the Director. If an appeal is filed before a contract award and the contract award is stayed by the procurement officer under subsection (E), the filing of an appeal to the Director shall automatically continue the stay unless the Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- J. Dismissal. No appeal hearing shall be scheduled, and the Director shall dismiss an appeal with a written determination if:
  - 1. The appeal does not state a basis for protest;
  - 2. The appeal is untimely under subsection (H); or
  - 3. The appeal is moot.
- K. Hearing. Hearings requested under this rule shall be conducted under 9 A.A.C. 22, Article 8.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

- 1. Sections Affected  
R20-6-101  
R20-6-160
- Rulemaking Action  
Amend  
New Section
- 2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):  
Authorizing statutes: A.R.S. §§ 20-143, 41-1003  
Implementing statutes: A.R.S. § 41-1033
- 3. The effective date of the rules:  
February 4, 1999
- 4. A list of all previous notices appearing in the Register addressing the final rule:  
Notice of Rulemaking Docket Opening: 4 A.A.R. 3050, October 16, 1998.  
Notice of Proposed Rulemaking: 4 A.A.R. 3596, November 6, 1998.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Vista Thompson Brown, Executive Assistant for Policy Affairs  
Address: Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:  
The Department initiated this rulemaking package to clarify the process for petitioning the Department under A.R.S. § 41-1033 for rulemaking action.
- 7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:  
None.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
- 9. The summary of the economic, small business and consumer impact:
  - a. The Department of Insurance  
The rule should not have any measurable economic impact on any group. It will have intangible benefits by clarifying the process.
  - b. Other Public Agencies  
Some public agencies will incur nominal costs associated with promulgating, copying, and publishing the rules.
  - c. Private Persons and Businesses Directly Affected

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Private persons and businesses will benefit from the Department's rules outlining the process for petitioning the Department for rulemaking action.

**d. Consumers**

Consumers will benefit from the Department's rules outlining the process for petitioning the Department for rulemaking action.

**e. Private and Public Employment**

The Department does not expect the adoption of these rules to impact private or public employment.

**f. State Revenues**

The Department does not expect the adoption of these rules to adversely impact state revenues.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**  
The text of the final rules has not been changed from the text of the rules submitted in the proposed rulemaking package. The Department added the words "and rulemaking petitions" to the article heading because the changes to the rules expand the scope of the article beyond "hearings".
11. **A summary of the principal comments and the agency response to them:**  
The Department did not receive any public comments regarding this rule package.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
None.
13. **Incorporations by reference and their location in the rules:**  
None.
14. **Was this rule previously adopted as an emergency rule?**  
No.
15. **The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 1. HEARING PROCEDURES AND  
RULEMAKING PETITIONS**

Section

- R20-6-101. Scope of Article; Definitions  
R20-6-160. Petition for Rulemaking Action

**ARTICLE 1. HEARING PROCEDURES AND  
RULEMAKING PETITIONS**

**R20-6-101. Scope of Article; Definitions**

- A. Scope. This Article ~~These rules of practice and procedure and Title 20 of the Arizona Revised Statutes govern contested cases before the Department. Except as otherwise provided in R20-6-160 for rulemaking petitions, this Article does~~ These rules do not apply to rulemaking or investigative proceedings before the Department. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to contested cases.
- B. Definitions. In this Article, the following definitions apply: unless the context otherwise requires:
1. "Attorney General" means the Attorney General of Arizona, and the Attorney General's his assistants, or special agents.
  2. No change.
  3. No change.
  4. No change.
  5. "Party" ~~has the meaning prescribed shall be as defined in A.R.S. § 41-1001(12), 41-1001(5).~~
  6. "Person" ~~has the meaning prescribed shall be as defined in A.R.S. § 41-1001(13), 41-1001(6).~~

7. No change.

**R20-6-160. Rulemaking Petition**

**A. The following definitions apply in this Section.**

1. "Department" means the Arizona Department of Insurance.
2. "Director" means the Director of the Department of Insurance.
3. "Petitioner" means a person who petitions the Department for rulemaking action.
4. "Rulemaking action" means the process for formulation and finalization of a new rule, or amendment or repeal of an existing rule.

**B. Any person may petition the Department under A.R.S. § 41-1033 for rulemaking action.**

**C. A person who seeks rulemaking action shall file, with the Director, a petition with the following information:**

1. The petitioner's name, address, and telephone number;
2. The name and address of any organization the petitioner represents;
3. A statement of the rulemaking action the petitioner seeks, including:
  - a. A citation to any existing rule, substantive policy statement, or Department practice to be amended or repealed; and
  - b. The specific language of a proposed new rule or rule amendment;
4. The reasons for the rulemaking action, including an explanation of why an existing rule, substantive policy statement, or Department practice is inadequate, unreasonable, unduly burdensome, or unlawful; and

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- 5. The petitioner's dated signature.
- D. The petitioner may submit additional supporting information, including:**
  - 1. Statistical data; and
  - 2. A list of other persons and entities likely to be affected by the proposed rulemaking action, with an explanation of the likely effects.
- E. Within 60 days of the date the Department receives the petition, the Department shall send the petitioner a written decision indicating whether the Department is denying the petition or will initiate the requested rulemaking action, with the reasons for the decision.**