

# 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* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 19. BOARD OF NURSING

##### PREAMBLE

#### **1. Sections Affected**

	<u>Rulemaking Action</u>
R4-19-301	Amend
R4-19-302	Amend
R4-19-303	Re-number
R4-19-303	New Section
R4-19-304	Re-number
R4-19-304	Amend
R4-19-305	Re-number
R4-19-305	Amend
R4-19-306	Re-number
R4-19-306	Amend
R4-19-307	Re-number
R4-19-307	Amend
R4-19-308	Re-number
R4-19-308	Amend
R4-19-309	Re-number
R4-19-309	Amend
R4-19-310	New Section
R4-19-311	Re-number
R4-19-311	Amend
R4-19-312	New Section
R4-19-510	Repeal

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

Authorizing statute: A.R.S. § 32-1606(A)(1), (A)(7), (B)(4), (B)(5), (B)(13), and (B)(21)

Implementing statutes: A.R.S. §§ 32-1601(4), 32-1632, 32-1633, 32-1634, 32-1634.01, 32-1634.02, 32-1635, 32-1637, 32-1638, 32-1639, 32-1639.01, 32-1639.02, 32-1640, 32-1642, and 32-1643

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

April 3, 2004

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 5019, December 6, 2002

Notice of Rulemaking Docket Opening: 9 A.A.R. 3059, July 11, 2003

Notice of Public Meeting on Open Rulemaking Docket: 9 A.A.R. 3067, July 11, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 4431, October 17, 2003

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

Name: Pamela K. Randolph  
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**6. An explanation of the rules, including the agency's reason for initiating the rules:**

The Board of Nursing is initiating rulemaking on 4 A.A.C. 19, Article 3 to implement recent statutory changes to licensure requirements. Additionally the Board anticipates that the amended rules will provide increased clarity for the public and eliminate unnecessary barriers to licensure. The following changes are being proposed:

**R4-19-301.**

**Subsection (A).**

This rule deletes the requirement for four years of high school. Many applicants come from foreign countries, notably the Philippines, that do not offer four years of high school. The Board considers completion of an appropriate nursing program a sufficient indicator of initial readiness to practice nursing without regard to number of years in high school

**Subsection (B).**

Grammatical and technical changes were made to improve clarity.

**Subsection (C).**

The Board proposes to reduce the artificial barriers to licensure for foreign-educated nurses by specifying the required standards instead of requiring all exam applicants to obtain a Certificate from the Commission on Graduates of Foreign Nursing Schools ("CGFNS Certificate"). A CGFNS Certificate has three components: a credential evaluation to determine if the applicant's nursing program is comparable to a United States program, a written test of English language proficiency, and a predictive exam ("CGFNS exam") of how well the candidate can be expected to perform on the National Council Licensure Examination for Nurses (NCLEX-RN®). The Board considers the following three standards essential to safe practice for examination candidates: graduation from a nursing program that is comparable to a U.S. program, written and verbal English language proficiency and passing the National Council Licensure Examination (NCLEX). The CGFNS exam does not substitute for passing NCLEX, is only offered at select locations three times per year, and requires a waiting period. The CGFNS exam requirement may delay an applicant's licensure by six months to a year. The Board does not require a predictive exam for U.S. educated applicants. The amended rules allow applicants from foreign nursing programs to meet essential requirements.

**R4-19-302.**

Changes were made in this rule to be consistent with the foreign nurse requirements already established in the previous subsection. Standards for accepting out-of-state educational programs were amended to clarify the Board educational requirements for licensure. By this clarification, the Board will ensure that graduates of programs from other jurisdictions have received education comparable to graduates of Board-approved nursing programs. Consistent with core requirements for the multi-state compact, the Board does not accept completing a non-nursing program or nurse assistant program combined with continuing education or experience as a substitute for completing a nursing program.

**R4-19-303.**

The Board is proposing standards for the recognition of a credential evaluation service whose reports may be submitted by graduates of foreign nursing programs. The Board has received, and subsequently confirmed, reports that the only entity approved to provide this service, CGFNS, takes up to six months after receipt of an applicant's documents to complete the evaluation. While this time-frame is expected to decrease, other jurisdictions report using credentialing agencies that provide a more timely response to applicants that meets their standards. This rule delineates the rigorous standards the Board will use in accepting a credential evaluation report and will allow candidates the choice of using any qualifying CES. Because of its overall reputation, and acceptance by other nursing regulatory boards and the U.S. Department of Immigration, CGFNS will remain an acceptable CES agency without needing to submit an application for Board approval.

The Board is aware the administrative procedures act would consider this an application and therefore subject to time-frame rules. The Board intends to amend time-frame rules to add this type of application in the next 24 months. In the meantime, the Board expects to process these applications within 90 days of receipt of all necessary information.

**R4-19-304.**

The rule for obtaining a temporary license was amended to improve clarity.

**R4-19-305.**

The rule for renewal of licensure was amended to reflect the practice requirement in R4-19-312.

**R4-19-306.**

The Board has eliminated the fee for placing a license on inactive status. With the practice requirement in this rule package, the Board anticipates that more nurses will place licenses on inactive status. In order to reduce the burden on licensees, many of whom are retired, the Board has eliminated the fee associated with this service.

**R4-19-307.**

Technical and grammatical changes were made to improve clarity.

**R4-19-308.**

Technical and grammatical changes were made to improve clarity and the requirement for an applicant to notify the Board of an address change was added.

**R4-19-309.**

School nurse certification requirements have been reorganized to increase clarity and understanding. Nurses in the community have requested that school nurse certification standards remain the same, but have asked that the Board improve the clarity of the rules. The Board amended these rules to divide and label the levels of school nurse certification from initial to third level. The levels track the progress of a school nurse in fulfilling the required education. The Board anticipates that the rule amendments will result in common vocabulary when referring to any point in the certification process.

**R4-19-310.**

The criterion for certification of professional nurses has been moved from Article Five to this Article. Certification by itself does not confer an expanded role or advanced practice. The list of organizations that certify nurses in Article Five has been replaced with the requirement that certifying agencies be accredited by agencies generally acceptable to the nursing community including the National Council of State Boards of Nursing.

**R4-19-312.**

The Board is requiring nurses renewing or endorsing into the state to show proof of practice, complete a refresher course, or place the license on inactive status. In the past, the Board has required an applicant to complete a refresher course if the license was inactive for five or more years and the applicant did not show evidence of active practice in the renewal application. This approach has exposed the Board to criticism that the Board places too much emphasis on whether a licensee has paid the required renewal fee to keep the license active rather than the skills required to safely practice nursing. Moreover, it has been pointed out that a licensee could activate a license in another state without the refresher course requirement and then use that active license as a basis to obtain an Arizona license. A licensee that continues to renew without practicing nursing is equally outdated in knowledge and skills as a licensee who places a license on inactive status for a comparable period. In order to apply the same standard, regardless of whether the nurse pays fees, and ensure that nurses with active licenses are current and competent, the Board is requiring that licensees practice in some manner for at least 960 hours every five years, either as an employee or volunteer, to renew and obtain initial licensure. This equates to 24 weeks of full-time practice every five years and is similar to requirements of other Boards of Nursing: Oregon (960 hours in five years), West Virginia PN (200 hours in two years), Maryland (1,000 hours in five years), Nebraska (500 hours in five years plus continuing education), and Mississippi and Pennsylvania (no specified hours). In addition, this requirement is congruent with research (*Evaluating the Effectiveness of Continuing Education Mandates*, National Council of State Boards of Nursing, Jan. '03) that shows that nurses view active practice as the largest contributor to their current abilities. In the proposed rule, "practice" is interpreted liberally. Any job or position that requires or recommends an RN or LPN license would meet the criteria as will any activity performed as an employee or volunteer that is within the legal scope of nursing practice. Licensees that do not meet the requirement may apply for and receive a temporary license to complete a nurse refresher course or place their licenses on inactive status without a fee.

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

The Board examined, "Evaluating the Effectiveness of Continuing Education Mandates," by June Smith, Ph.D., RN, a study conducted and published by the National Council of State Boards of Nursing, Research Briefs, Vol. 6, September 3002. The study, data, and analysis may be obtained from the National Council of State Boards of Nursing, 111 E. Wacker Dr., Ste. 2900, Chicago, IL 60601, www.ncsbn.org. Copies of the study may also be reviewed in the Board offices. The Board utilized this study to support the practice requirement in R4-19-312.

**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

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

The Arizona State Board of Nursing licenses and regulates approximately 40,000 registered nurses, 10,000 licensed practical nurses and 25,000 nursing assistants in this state. Additionally the Board oversees 19 nursing programs and approximately 175 nurse assistant programs.

The Board anticipates that this rulemaking will have economic benefits for employers of nursing. Graduates of foreign nursing programs will qualify for licensure in a timely manner with the requirement for a predictive exam removed. A consequence of this change may be increased applications from foreign educated nurses for licensure by exam. The Board received approximately 66 exam applications from nurses educated in foreign jurisdictions in 2001 and 132 in 2002. It is anticipated that this volume and revenue will increase by at least 60 licensees per year as the nursing shortage drives more employers to seek nurses abroad. The Board does not anticipate hiring additional personnel to handle the load, but has readjusted the workload of current employees to deal with foreign nurse issues. The workload of Board members, clerical staff, and the Education Consultant will also increase in processing and approving applications from Credential Evaluation Services and rulemaking necessary to establish time-frame rules.

The Board will experience decreased revenues of approximately \$40,000 per year by eliminating the inactive fee and may incur a loss of revenue as nurses that practice less than 960 hours place their licenses on inactive status.

Both school nurses and the Board will benefit from the language changes to R4-19-309. This rule was difficult to interpret in the past and the sections relating to previous certification by DHS have been incorporated into each level of certification so that Board staff and certificate seekers can understand the rule better.

Moving the certification standards from Article 5, Advanced Practice, to this Article will enhance the understanding of the rule. Certification of nurses is recognized by the Board but does not confer an increased scope of practice that is inherent in advanced practice nursing. The laundry list of certifying agencies in Article Five is outdated. The Board intends to recognize all certifying organizations that are nationally accredited by the groups listed in the rule. This is also the standard recommended by the National Council of State Boards of Nursing. Nationally certified nurses recognized by the Board may be able to collect fees for services under federal regulations. Recognizing certifications from accredited organizations rather than a laundry list of associations, allows for flexibility while imposing a rigorous standard. This rule may increase revenue for nurses eligible to be reimbursed for nursing services and eliminate the expense the Board incurs updating the rules as certifying agencies are added to the list, change names, or lose accreditation.

The continued competency standard in R4-19-312 may confer a cost to licensees that need a refresher course. Refresher courses range from no cost at John C. Lincoln Health Network, if the licensee becomes an employee, to approximately \$1000. The average cost of a program is around \$600. Employers may pay for the cost of the program if the licensee is willing to work for them upon graduation. The Board believes the public will benefit from licensees having current knowledge and skill in nursing practice. This public benefit outweighs the cost to the licensee of the refresher course. Licensees would not incur a cost to place their licenses on inactive status. The Board would bear the cost of monitoring compliance with the rule, which would increase the workload of the licensing technicians. Efficiencies in processing licenses that are being implemented should make it unnecessary to increase staff in this area.

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

Various technical and grammatical changes were made at the suggestion of Council staff and to improve clarity of the rules.

**11. A summary of the comments made regarding the rules and the agency response to them:**

A workshop on proposed Article 3 was properly noticed in the *Register* and held on August 14, 2003. Four members of the public attended.

All members of the public spoke in favor of the rules and offered no amendments. The school nurse representatives in attendance commended the Board on the clarity of the school nurse rules. Marla Weston, AzNA Executive Director, spoke in favor of three aspects of the rules: the requirements for foreign nurses, the practice requirement, and the school nurse rules. Ms. Weston also commended the Board for excellent communication regarding the proposed rules. A letter of support for the foreign nurse requirement from Meladee Stankus, President and CEO of Nurse Immigration USA, was read into the record.

An oral proceeding was held on November 19, 2003 at the Board offices. Five persons attended the proceeding and offered comments. Two written comments from the same person were received during the public comment period.

\*Three persons, Wendy Hauptli, RN, Arizona Healthcare Recruiters, Mary Ellen Berens, Maricopa Integrated Health System Nurse Recruiter, and Rita Cleveland, Sun Health Corporation Professional Recruiter questioned how the practice requirement related to nurse recruiters. Board staff explained the rulemaking and provided a written summary sheet that indicated that nurses functioning as recruiters were practicing nursing under the provisions of A.A.C. R4-19-312. Ms. Cleveland questioned whether volunteer service should count as practice. The Board believes that the rule should allow nurses to practice in a volunteer capacity and retain their licenses as long as they meet the minimum hours of practice. The group also questioned the notice provided to the public. It was pointed out that not only was the proposed rule properly noticed in the *Register*, it was posted on the Board web site in August, 2003 and three references to the rulemaking including the "Frequently Asked Questions" document regarding the practice require-

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ment were published in the Board's August 2003 newsletter. Additionally, Scope of Practice and Education Advisory Committees reviewed drafts of the rule and it was provided to the Arizona Nurses Association for input.

\*Mary Griffith RN, MS representing the Arizona Nurses Association spoke in support of the rulemaking and in particular R4-19-312, the practice requirement.

\*Mary Walton, private citizen, submitted two written comments and offered oral testimony in opposition to R4-19-312. The comments made and the Board's responses are summarized below.

<b>Ms. Walton's Comments</b>	<b>Board's Responses</b>
R4-19-312 is a barrier to practice for nurses that work for part of a shift on a sporadic basis. Examples of volunteers in a school health office and a nurse that worked an occasional six-hour shift in a Labor and Delivery unit were provided.	The practice requirement is a minimal requirement to maintain competence. Over the course of five years, a nurse can work as little as four hours per week and meet this requirement. According to the study cited above, nurses themselves consider working the overwhelming factor contributing to competence. The Board believes that a nurse could not remain competent with fewer hours of practice.
The rule does not specifically address a nurse who stops practice to pursue a higher nursing degree.	The rule does specifically address this issue in R4-19-312(B)(1).
Only two Boards of Nursing have similar requirements.	Many Boards of Nursing are currently examining competence and enacting requirements that address this important public safety issue. Some Boards of Nursing require continuing education, but according to the study cited above, this does not contribute significantly to competence. In meeting the statutory requirement that the Board establish minimal competency standards for maintaining a license (A.R.S. § 32-1606(B)(21), the Arizona State Board of Nursing chose an approach that was supported by recent research. Although, the Board realizes that the practice requirement may not be all that is necessary to ensure competence, it appears to be a reasonable standard.
R4-19-312 is a "one size fits all rule" and competence "has little or no bearing" on competence in another field of nursing.	The Board agrees with this statement. That is why the rule was crafted to liberally interpret practice to include both clinical and non-clinical nursing practice. The nurse is expected to be competent at what he or she does every day, not all areas of nursing.
The refresher course required is time consuming, based in medical/surgical nursing, and may not meet a nurse's need.	Medical-surgical nursing is the basis of nursing science. A thorough knowledge of medical-surgical nursing provides a sound foundation for specialty practice. There are many avenues to complete a refresher course. The Board has a list of approved courses. Many of the courses are distance and web-based. These courses can be completed in an efficient manner with clinical experiences tailored to the student's need.
The Board should require practice in nursing and not specify the hours.	This approach would not establish a minimum standard and would do little to encourage active nursing practice to maintain a license.

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<p>A nurse who works for six months full-time at the beginning of a five-year period would be able to renew, but a nurse who “stops out” and works part-time for the last two years may not qualify.</p>	<p>The Board believes that the 960 hours over five years gives individual nurses greater flexibility in meeting the requirement. The nurse working part-time for the last two years of the five year cycle could work as little as 10 hours per week and meet the requirement.</p>
<p>This may exacerbate the nursing shortage by pushing part-time nurses out of practice.</p>	<p>The rule would not affect those nurses who work a regular part-time schedule of at least four hours per week over the five-year period. The Board believes that less practice than this is not sufficient to maintain competence in the work setting. The Board further believes that the rule may encourage part-time nurses, who work or volunteer sporadically, to increase their commitment to nursing by working more hours.</p>

**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. Were these rules previously made as emergency rules?**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

**ARTICLE 3. LICENSURE**

Section

- R4-19-301. Licensure by Examination
- R4-19-302. Licensure by Endorsement
- R4-19-303. Requirements for Credential Evaluation Service
- ~~R4-19-303.~~ R4-19-304. Temporary License
- ~~R4-19-304.~~ R4-19-305. License Renewal
- ~~R4-19-305.~~ R4-19-306. Inactive License
- ~~R4-19-306.~~ R4-19-307. Application for a Duplicate License
- ~~R4-19-307.~~ R4-19-308. Change of Name or Address
- ~~R4-19-308.~~ R4-19-309. School Nurse Certification Requirements
- R4-19-310. Certified Registered Nurse
- ~~R4-19-309.~~ R4-19-311. Nurse Licensure Compact
- R4-19-312. Practice Requirement

**ARTICLE 5. ADVANCED PRACTICE NURSING**

- ~~R4-19-510. Certification of Professional Nurse Repealed~~

**ARTICLE 3. LICENSURE**

**R4-19-301. Licensure by Examination**

**A. An applicant for licensure by examination shall:**

1. Submit to the Board a verified application on a form furnished by the Board that provides the following information about the applicant:
  - a. Full name and any former names used by the applicant;
  - b. Mailing address, including primary state of residence, and telephone number;
  - c. Place and date of birth;
  - d. Ethnic category and marital status, at the applicant’s discretion;
  - e. Social security number for an applicant who lives or works in the United States;

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- ~~f.~~ Name and location of high school attended by the applicant, including years attended and graduation date, if applicable; or information regarding a passing score on an equivalency examination.
  - ~~i.~~ Four years of high school or its equivalent is required for professional nurse applicants and practical nurse applicants not licensed in another state or territory of the United States.
  - ~~ii.~~ Two years of high school or its equivalent is required for practical nurse applicants licensed in another state or territory of the United States.
  - ~~g-f.~~ Post-secondary education, including the names and locations of schools attended, graduation dates, and degrees received, if applicable;
  - ~~h-g.~~ Current employer or practice setting, including address, telephone number, position, and dates of employment service, if employed or practicing in nursing or health care, and previous employer or practice setting in nursing or health care, if any, if current employment is less than ~~12 months~~ 960 hours within the past five years;.
  - ~~i-h.~~ Any state, territory, or country in which the applicant holds a ~~professional~~ registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
  - ~~j-i.~~ The date the applicant previously filed an application for licensure in Arizona, if applicable or known;
  - ~~k-j.~~ Responses to questions regarding the applicant's background on the following subjects:
    - ~~i.~~ Pending disciplinary action by a nursing regulatory agency in the United States or its territories or current investigation of the applicant's nursing license in another state or territory of the United States;.
    - ~~ii.~~ Felony conviction or conviction of an undesignated or other similar offense; and
    - ~~iii.~~ Any act of unprofessional-Unprofessional conduct as defined in A.R.S. § 32-1601;.
  - ~~l-k.~~ Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
  - ~~l.~~ Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit a completed fingerprint card for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card to the Board within the last two years; and
3. Pay the applicable fees.
- B.** ~~In addition to the application, the following are required:~~
- ~~1.~~ If ~~the an~~ applicant took the SBTPE State Board Test Pool Examination (SBTPE), National Council Licensure Examination NCLEX-RN (NCLEX®) RN, or NCLEX-PN in any state or territory of the United States or in Canada, ~~the applicant shall indicate on the application:~~
    - ~~a-1.~~ The date of the examination,
    - ~~b-2.~~ The location of the examination, and
    - ~~e-3.~~ The result of the examination.
- ~~2-C.~~ For graduates If an applicant is a graduate of a nursing programs program in the United States; that has been assigned a program code by the National Council of State Boards of Nursing, the applicant shall submit one of the following:
- ~~a-1.~~ If the program is an Arizona-approved program, a Certificate statement of completion signed by the a nursing program administrator or designee of an Arizona-approved professional nursing program for a professional nurse applicant or Arizona-approved practical nursing program for a practical nurse applicant; or verifying that:
    - ~~a.~~ The applicant graduated from a registered nursing program for a registered nurse applicant; or
    - ~~b.~~ The applicant completed a practical nursing program or graduated from a registered nursing program for a practical nurse applicant; or
  - ~~2.~~ If the program is located in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under R4-19-201 to R4-19-206 when the applicant completed the program, an official Transcripts transcript or other documentation verifying completion of a nursing program sent directly from one of the following as:
    - ~~i.~~ Evidence of graduation from a Diploma diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a professional registered nurse applicant.
    - ~~ii.~~ Evidence of completion of a Practical practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.
- ~~3-D.~~ For graduates If an applicant is a graduate of a foreign nursing programs program and lacks items required in subsection (C), the applicant shall comply with subsections (A) and (B), submit verification of the status of any nursing licenses held, and submit proof of one of the following:
- ~~a-1.~~ To demonstrate nursing program equivalency, one of the following:
    - ~~a.~~ Evidence of a Passing passing score on the English language version of either the Canadian Nurses' Association Testing Service in English, or the Canadian Registered Nurse Examination or an equivalent examination; and
      - ~~i.~~ Copy of a license from a foreign country in good standing; or
      - ~~ii.~~ Transcript verifying completion of a foreign nursing program.

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- b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools- (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
- c. A report from another credential evaluation service (CES) that is accepted by the Board. The Board shall accept reports from a CES if acceptance is in the best interest of the public and the CES submits the information required by the Board under R4-19-303.
- 2. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are held in a foreign language if the principal language of the country or region where the nursing program was held is a language other than English. An applicant shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
  - a. Evidence of a minimum score of 540 on the paper and pencil version or 207 on the computer-based version of the Test of English as a Foreign Language (TOEFL) and a minimum score of 50 on the Test of Spoken English (TSE) or an equivalent score on a combined spoken and written TOEFL.
  - b. Evidence of a minimum score of 6.5 on the Academic Exam and 7.0 on the spoken exam of the International English Language Test Service (IELTS) Examination.
  - c. Evidence of a minimum score of 725 on the Test of English in International Communication (TOEIC) exam and 50 on the TSE.
  - d. A Visa Screen Certificate from CGFNS.
  - e. A CGFNS Certificate and a score of 50 on the TSE.
  - f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
  - g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in another country or territory where the principal language is English.
- 4.E. ~~For a professional~~ An applicant for a registered nurse license nurse applicant, one of the following shall attain:
  - a-1. A passing score on the NCLEX-RN;
  - b-2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
  - e-3. A score of not less than 350 on each part of the SBTPE for ~~professional~~ registered nurses.
- 5.F. ~~For a practical nurse applicant, one of the following~~ An applicant for a practical nurse license shall attain:
  - a-1. A passing score on the NCLEX-PN;
  - b-2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
  - e-3. A score of not less than 350 on the SBTPE for practical nurses.
  - 6. ~~State and federal criminal history results, if applicable.~~
- ~~C.G.~~ The Board shall grant licensure a license to practice as a professional registered or practical nurse to any applicant who meets the criteria established in statute and this Section Article. An applicant who is denied licensure a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**R4-19-302. Licensure by Endorsement**

- A. An applicant for ~~licensure a license~~ by endorsement shall submit all of the information required in R4-19-301(A).
- B. In addition to the information required in subsection (A), ~~the following are required:~~ an applicant for a license by endorsement shall:
  - 1. ~~A~~ Submit evidence of a passing examination score in accordance with:
    - a. R4-19-301(B)(4) (E) for ~~professional~~ a registered nurse applicants applicant, or
    - b. R4-19-301(B)(5) (F) for a practical nurse applicants applicant.
  - 2. ~~Verification~~ Submit evidence of the following:
    - a. Previous or current license in another state or territory of the United States ~~or a foreign country,~~ and
    - b. One of the following:
      - i. Completion of a nursing program that has been assigned a nursing program code by the National Council of State Boards of Nursing at the time of program completion and meets educational standards substantially comparable to Board standards for educational programs in R4-19-201 to R4-19-206,
      - ii. Completion of a nursing program that met the qualifications for a program code at the time of the applicant's graduation if before 1986 and the applicant was issued an initial license in another state or territory of the United States without being required to obtain additional education or experience, or
      - iii. ~~General report from the Commission on Graduates of Foreign Nursing Schools indicating that a foreign nursing program is substantially equivalent to an approved professional or practical nursing program in the United States.~~ For a graduate of a foreign nursing program, completion of a nursing program that meets the requirements in R4-19-301(D)(1). In addition, an applicant who graduated from a foreign nursing program shall satisfy the English proficiency requirements in R4-19-301(D)(2) if the applicant has not practiced nurs-

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ing for a minimum of 960 hours within the past five years in another state, territory, or country where English is the primary language.

3. ~~State and federal criminal history results, if applicable.~~

- C. The Board shall grant licensure a license to practice as a professional registered or practical nurse to any applicant who meets the criteria established in statute and this Section Article. An applicant who is denied licensure a license by endorsement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**R4-19-303. Requirements for Credential Evaluation Service**

A. A credential evaluation service that seeks to be accepted by the Board shall submit documentation to the Board for initial acceptance and every three years that it:

1. Provides a credential evaluation to determine comparability of registered nurse or practical nurse programs in other countries to nursing education in the United States;
2. Evaluates original source documents;
3. Has five or more years of experience in evaluating nursing educational programs or employs personnel that have this experience;
4. Employs staff with expertise in evaluating nursing programs;
5. Has access to resources pertinent to the field of nursing education and the evaluation of nursing programs;
6. Issues a report on each applicant, and supplies the Board with a sample report, regarding the comparability of the applicant's nursing educational program to nursing education in the United States that includes:
  - a. The name of the applicant including any former names.
  - b. Source and description of the documents evaluated.
  - c. Name and nature of the institution.
  - d. Dates applicant attended.
  - e. References consulted.
  - f. A seal or some other security measure, and
  - g. Notification of any falsification or misrepresentation of documents by the applicant;
7. Has a quality control program that includes at a minimum:
  - a. Standards regarding the use of original documents.
  - b. Verifying authenticity of documents and translations.
  - c. Security of documents.
  - d. Confidentiality of records.
  - e. Responsiveness to applicants that include the criterion that reports are issued no later than eight weeks from the receipt of an applicant's documents; and
  - f. Tracking and notification of the Board of any trends in falsification or misrepresentation of documents;
8. Follows the standards of the National Association of Credentialing Services (NACES) or an equivalent organization regarding staffing and resources;
9. Will allow the Board to conduct a site survey at any time deemed necessary by the Board; and
10. Agrees to notify the Board before any changes in any of the above criteria.

B. Depending on the severity of the violation, the Board may revoke the approval of a credential evaluation service that fails to comply with the criteria established in this Section.

C. The Board shall approve a credential evaluation service that meets the criteria established in this Section. An applicant who is denied approval or whose approval is revoked may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**~~R4-19-303.~~ R4-19-304. Temporary License**

A. Subject to subsection (B), the Board shall issue a temporary license to an applicant desiring to practice nursing pending licensure if the applicant if:

1. ~~Is qualified under~~ An applicant:
  - a. Is qualified under:
    - i. A.R.S. § 32-1635 if applying and applies for a temporary professional registered nursing license, or is qualified under A.R.S. § 32-1640 if applying and applies for a temporary practical nursing license; and
    - ~~b-ii.~~ R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
  - b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
  - c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).

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2. ~~Lacks a state criminal history as verified by a report issued by the Department of Public Safety, if seeking licensure by examination. An applicant is seeking a license by examination, meets the requirements of R4-19-312(C), and the Board receives a report from the Arizona Department of Public Safety (DPS), verifying that DPS has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant or that any criminal history reported has been reviewed by the executive director or the director's designee and determined not to pose a threat to public health, safety, or welfare; or~~
  3. ~~Files an application for licensure by endorsement and submits documents or an official statement from another state board of nursing verifying that the applicant has a current license in good standing in another state or territory of the United States; or~~
  3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States; or
  4. An applicant has an expired, inactive, or lapsed license for five or more years, or does not meet the requirements in R4-19-312(B) or (C), but provides evidence that the applicant has applied for enrollment in a refresher program. Files an application and enrolls in a refresher program, if seeking renewal of a license that has been inactive or expired five or more years.
  5. Pays the applicable fees.
- B.** An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, or a pending complaint before the Board is not eligible for a temporary license or extension of a temporary license without prior Board approval.
- C.** A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D).
- D.** An applicant ~~holding~~ with a temporary license may apply for and the Board or the Executive Director ~~shall~~ may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.
- E.** An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license.

**~~R4-19-304, R4-19-305, License Renewal~~**

- A.** An applicant for renewal of a ~~professional registered~~ or practical nursing license shall:
1. Submit to the Board ~~an a verified application furnished by~~ obtained from the Board that provides all of the following information about the applicant:
    - a. Full name, ~~and~~ mailing address, and primary state of residence;
    - b. A listing of all states in which the applicant is currently licensed; ~~and~~
    - c. Marital status, at the applicant's discretion; ~~;~~
    - d. ~~Demographic information~~ Information regarding qualifications, including but not limited to:
      - i. Educational background; ~~;~~
      - ii. Employment status; ~~;~~ and
      - iii. Practice setting; ~~;~~
    - e. Responses to questions regarding the applicant's background on the following subjects:
      - i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal; ~~;~~ ~~and~~
      - ii. Felony convictions or convictions for undesignated or other similar offenses since the time of last renewal; ~~;~~ and
      - iii. ~~Any act of unprofessional~~ Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal; ~~;~~
    - f. A Detailed ~~detailed~~ explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; ~~;~~
    - g. Information about the applicant's current or most recent nursing practice under R4-19-312, including position, address, telephone number, and dates of practice. If the period of practice in the current position is less than 960 hours within the last five years, the nurse shall provide, if available, documentation of 960 hours of practice in the last five years; and
    - h. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date;
  2. Pay ~~the applicable~~ fees for renewal authorized by A.R.S. § 32-1643(6); ; and
  3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(7) if the application for renewal is submitted after August 1 of the year of renewal.;
    - a. ~~The renewal date is before July 1, 2002 and the application for renewal is submitted after expiration of the license; or~~
    - b. ~~The renewal date is on or after July 1, 2002, and the application for renewal is submitted after August 1 of the year of renewal.~~
- B.** ~~A license renewed prior to July 1, 2000 is valid for two years and expires on the expiration date indicated on the license issued by the Board.~~
- ~~C.~~B.** A license renewed after July 1, 2000 expires November 2 of the year of renewal indicated on the license.

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~~D.~~ A licensee whose license has been inactive or expired for five or more years shall submit proof of one of the following with the renewal application:

1. Employment as a professional nurse or licensed practical nurse in another state or foreign country within the previous five-year period; or
2. Satisfactory completion of a Board-approved refresher program that includes theory and supervised clinical practice within the past year.

~~E.C.~~ A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.

~~F.D.~~ The Board shall grant an application for renewal renew the license of a professional any registered or practical nursing license nurse to any applicant who meets the criteria established in statute and this Section Article. An applicant who is denied renewal of ~~license~~ ensure a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying ~~the renewal application of the license.~~ Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

~~R4-19-305.~~ **R4-19-306. Inactive License**

A. A licensee in good standing may submit a written request ~~request to the Board to transfer to inactive status, in writing to the Board, or by requesting transfer to inactive status~~ request a transfer to inactive status on a verified renewal application. ~~The licensee shall submit the applicable fees with the request or application.~~

B. The Board shall send a written notice to the licensee granting inactive status in writing or denying the request. A licensee denied a request for transfer to inactive status may request a hearing by filing a written request with the Board within 30 days of service of the denial of the request. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

~~R4-19-306.~~ **R4-19-307. Application for a Duplicate License**

A. A licensee shall report a lost or stolen license to the Board, in writing, within 30 days of the loss.

B. A licensee ~~desiring~~ requesting a duplicate license shall file an application for a duplicate license and pay the applicable fee under A.R.S. § 32-1643(14).

~~R4-19-307.~~ **R4-19-308. Change of Name or Address**

A. A licensee or applicant shall notify the Board, in writing, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.

B. A licensee or applicant shall notify the Board of any change in mailing address within 30 days.

~~R4-19-308.~~ **R4-19-309. School Nurse Certification Requirements**

A. Application requirements. An applicant for initial school nurse certification shall:

1. Hold a current license in good standing or multistate privilege to practice as a ~~professional~~ registered nurse in Arizona; ~~and~~
2. Submit to the Board a verified application on a form furnished by the Board that provides the following information about the applicant:
  - a. Full name and any former names used by the applicant;
  - b. Mailing address and telephone number;
  - c. ~~Professional~~ Registered nurse license number;
  - d. Social security number;
  - e. A description of the applicant's educational background, including the number and location of schools attended, the number of years attended, the date of graduation, the type of degree or certificate awarded, and if applicable, a statement that the applicant has satisfied the educational requirements specified in subsection (C), (D), or (E);
  - f. Current employer, including address, telephone number, position type, dates of employment, and previous employer if the current employment is less than 12 months;
  - g. The name of any national certifying organization, specialty area, certification number and date of certification, if applicable;
  - h. Responses to questions regarding the applicant's background on the following subjects:
    - i. Pending disciplinary action by a nursing regulatory agency in the United States or its territories or current investigation in another state or territory of the United States; ;
    - ii. Felony conviction or conviction of an undesignated or other similar offense; ; and
    - iii. ~~Any act of unprofessional~~ Unprofessional conduct as defined in A.R.S. § 32-1601-; and
  - i. Detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
3. Pay ~~the~~ applicable fees.

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- B. ~~Certification and renewal terms.~~ Initial-level certification.**
1. ~~Initial certification and first renewal of certification is valid for three years. Only applicants who have never been certified by the Board or the Department of Education are eligible for certification at the initial level. The Board does not require additional education, exceeding that required for licensure as a registered nurse for initial-level certification.~~
  2. Initial-level certification expires three years after the issue date on the certificate.
  2. ~~Subsequent renewals of certification are valid for six years.~~
  3. ~~An applicant holding a school nurse certificate issued by the Department of Education or by another state shall provide proof of completion of the educational requirements of subsection (C)(1), (C)(2), or (C)(3) for the certification or renewal period applicable to the applicant.~~
- C. ~~Educational requirements.~~ First-level certification.**
1. ~~Upon application for the first renewal of certification, a professional nurse shall provide proof of completion of all of the following educational requirements:~~  
If the initial-level certificate of a school nurse has expired, or the school nurse was previously certified by the Department of Education and has never renewed, the nurse shall apply for first-level certification. In addition to the requirements in subsection (A), the registered nurse applicant shall provide evidence of completion of all the following:
    - a. Three semester hours in school nurse practice course work,
    - b. Three semester hours in physical assessment of the school-aged child course work, and
    - c. Three semester hours in nursing care of the child with developmental disabilities.
  2. A first-level certificate expires three years after the issue date on the certificate.
- D. Second-level certification.**
2. ~~Upon application for second renewal of certification, a professional nurse shall provide proof of one of the following:~~
  1. If the first-level certificate of a school nurse has expired, or the school nurse was previously certified by the Department of Education and has renewed once, the nurse shall apply for second-level certification. In addition to the requirements in subsection (A), the registered nurse applicant shall provide evidence of completion of the following:
    - a. A bachelor of science degree in nursing, or
    - b. Completion of the following educational requirements:
      - i. Three semester hours in community health nursing theory or population-based care;
      - ii. Three semester hours in management theory; and
      - iii. Either three semester hours of upper division or graduate credit in nursing or health-related subjects from a regionally-accredited institution, as defined in R4-19-101(23), or 45 contact hours of continuing education related to nursing practice.
  2. A second-level certificate expires six years after the issue date on the certificate.
- E. Third-level certification.**
3. ~~Before all subsequent applications for renewal of certification, a professional nurse shall provide proof of completion of one of the following educational requirements:~~
  1. If the second-level certificate of a school nurse has expired or the school nurse was previously certified by the Department of Education and has renewed two or more times, the nurse shall apply for third-level certification on all subsequent renewals. In addition to the requirements in subsection (A), the registered nurse applicant shall provide evidence of all the following:
    - a. Six semester hours of upper division or graduate credit in nursing or health-related subjects from a regionally accredited institution, as defined in R4-19-101(23); or
    - b. Ninety contact hours of continuing education related to nursing practice.
  2. Third-level certification expires six years after the issue date on the certificate.
  4. ~~Notwithstanding subsections (B)(3) and (C)(1), a professional nurse who is or has been certified as a school nurse by the Department of Education, is applying for initial certification, first renewal of certification, or subsequent renewal of certification by the Board as a school nurse, and:~~
    - a. ~~Has completed the educational requirements in (C)(1), shall provide proof of completion of the educational requirements in (C)(2); or~~
    - b. ~~Has completed the educational requirements in (C)(2), shall provide proof of completion of the educational requirements of (C)(3).~~
- ~~D-E.~~ The Board shall grant a school nurse certification certificate to any applicant who meets the criteria established in statute and this ~~Section~~ Article. An applicant who is denied a school nurse certification certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.**

**R4-19-310. Certified Registered Nurse**

A registered nurse who has been certified by a nursing organization accredited by the American Board of Nursing Specialties, the National Commission for Certifying Agencies, or an equivalent accrediting agency as determined by the Board is deemed certified for the purposes of A.R.S. § 32-1601(4).

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**~~R4-19-309.~~ R4-19-311. Nurse Licensure Compact**

The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the *Nurse Licensure Compact: Model Rules and Regulations*, published by the National Council of State Boards of Nursing, Inc., 676 N. St. Clair Street, Suite 550, 111 E. Wacker Dr., Suite 2900, Chicago, IL, 60611-60601, [www.ncsbn.org](http://www.ncsbn.org), November 2, 1999, and no later amendments or editions, which is incorporated by reference and on file with the Board ~~and the Office of the Secretary of State.~~

**R4-19-312. Practice Requirement**

- A.** The Board shall not issue a license or renew the license of an applicant who does not meet the applicable requirements in subsections (B), (C), and (D).
- B.** An applicant for licensure by endorsement or renewal shall complete a nursing program or practice nursing at the applicable level of licensure for a minimum of 960 hours in the five years before the date on which the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
1. Completed a nursing education program and obtained a degree, or an advanced practice certificate in nursing within the past five years; or
  2. Practiced for a minimum of 960 hours within the past five years where the nurse:
    - a. Worked for compensation or as a volunteer, as a licensed nurse, and performed one or more acts under A.R.S. § 32-1601(13) for a registered nurse or A.R.S. § 32-1601(12) for a practical nurse; or
    - b. Held a position for compensation or as a volunteer that required or recommended, in the job description, the level of licensure being sought or renewed; or
    - c. Engaged in clinical practice as part of an RN-BSN, masters, doctoral, or nurse practitioner program.
- C.** An applicant for licensure by examination, who is a graduate of a nursing program located in the U.S or its territories, shall complete a pre-licensure nursing program within two years of the date of licensure. Examination applicants who were previously licensed in a foreign jurisdiction shall meet the applicable requirements of subsection (B) or (D).
- D.** A licensee or applicant who fails to satisfy the requirements of subsection (B) or (C), shall submit evidence of satisfactory completion of a Board-approved refresher program that meets the requirements in R4-19-214. The Board may issue a temporary license stamped "for refresher course only" to any applicant who meets all requirements of this Article except subsection (B) or (C) and provides evidence of applying for enrollment in a Board-approved refresher program.

ARTICLE 5. ADVANCED NURSING PRACTICE

**R4-19-510. Certification of Professional Nurse Repealed**

A professional nurse who has been certified by one of the following national nursing credentialing agencies shall be deemed to be certified for purposes of A.R.S. § 32-1601(3):

- ~~1. American Nurses Credentialing Center;~~
- ~~2. American College of Nurse-Midwives or its Certification Council;~~
- ~~3. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;~~
- ~~4. National Board of Pediatric Nurse Practitioners and Associates;~~
- ~~5. Council on Certification of Nurse Anesthetists;~~
- ~~6. American Association of Critical Care Nurses;~~
- ~~7. Board of Certification for Emergency Nursing;~~
- ~~8. Wound Ostomy and Continence Nursing Certification Board;~~
- ~~9. Board of Nephrology;~~
- ~~10. Certification Board of Infection Control;~~
- ~~11. American Board of Neuroscience Nursing;~~
- ~~12. American Board for Occupational Health Nurses, Inc.;~~
- ~~13. American Operating Room Nurses National Certification Board, Inc.;~~
- ~~14. Association of Rehabilitation Nurses;~~
- ~~15. American Board of Urologic Allied Health Professionals, Inc.;~~
- ~~16. Oncology Nursing Society;~~
- ~~17. Intravenous Nurses Society Certification Corporation;~~
- ~~18. American Society of Post Anesthesia Nurses;~~
- ~~19. American Society for Parenteral and Enteral Nutrition, Inc.;~~
- ~~20. Association of Diabetes Educators;~~
- ~~21. Certifying Council for Gastroenterology Clinicians, Inc.;~~
- ~~22. International Childbirth Education Association;~~
- ~~23. Addictions Nursing Certification Board;~~
- ~~24. National Certifying Board for Ophthalmic Registered Nurses;~~
- ~~25. Orthopedic Nurses Certification Board; and~~
- ~~26. American Academy of Nurse Practitioners.~~

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

- 1. Sections Affected**

R4-33-104	<b><u>Rulemaking Action</u></b>
R4-33-205	New Section
R4-33-405	Repeal
	Repeal
- 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. §§ 36-446.03(B) and 36-446.12
- 3. The effective date of the rules:**  
April 13, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rules:**  
Notice of Rulemaking Docket Opening: 9 A.A.R. 4085, September 19, 2003  
Notice of Proposed Rulemaking: 9 A.A.R. 4605, October 31, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name:	Victoria Martin, Executive Director
Address:	Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers 1400 W. Washington, Room B-8 Phoenix, AZ 85007
Telephone:	(602) 542-8156
Fax:	(602) 542-8316
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**  
In order to continue its licensing and oversight functions, the Board has determined that it must increase its fees. The fee for a nursing care institution administrator examination is being increased from \$250 to \$500, while the fee for an assisted living facility manager examination is being increased from \$40 to \$100. Although A.R.S. § 36-446.03(B)(1) provides authority for the Board to charge a fee of up to \$100 for an application for a certificate as an assisted living facility manager, the Board currently does not charge the fee. In order to cover the costs of processing applications, the Board proposes to charge \$100 for an application for a certificate as an assisted living facility manager. The Board is increasing the fee for readministering an assisted living facility manager examination from \$40 to \$100. For nursing care institution administrators, the fee for readministering a state examination is being increased from \$100 to \$150. The Board is increasing its license issuance fee from \$240 to \$260 and its biennial renewal license fee from \$240 to \$300. The fees for a duplicate license or certificate, temporary certificate, and late certificate penalty are each being increased to \$50.
- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The Board did not review any study relevant to the rules.
- 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:**  
In order to continue its licensing and oversight functions, the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) has determined that it must increase its fees for licensing nursing care institution administrators (administrator) and certifying assisted living facility managers (manager). The Board's mission is to protect the health and safety of Arizona citizens who seek and use the services of nursing care administrators and assisted living facility managers by evaluating administrator and manager applications, testing applicants to ensure they qualify for licensure or certification, and investigating all complaints. All of these functions are accomplished through a fee-based program. The Board has not increased its fees for assisted living facility managers (formerly called Adult Care Home Managers) since the manager fee rules were first established in 1991. The Board has not increased its administrator fees since 1992.

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Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

Costs to an applicant for an assisted living facility manager certificate will be minimally increased for an initial application, examination, issuance of a temporary certificate, or readministering a state examination. Costs will minimally increase to a certificate holder for issuance of a duplicate certificate or penalty for late renewal.

Currently, the Board charges an administrator applicant a \$350 application and examination fee, \$100 of which is nonrefundable. The Board considers the \$100 fee to be the application fee. Thus, an administrator applicant for a license will not experience any increase in costs for an application fee. Costs to an administrator applicant will be minimally increased for an examination, issuance of a license, or readministering a state examination.

A licensee will experience a minimal increase in costs for biennial renewal or issuance of a duplicate license.

Costs to a consumer using the services of nursing care administrators and assisted living facility managers should not increase.

Since the Board mission is to protect the health and safety of Arizona citizens who seek and use the services of nursing care administrators and assisted living facility managers by evaluating administrator and manager applications, testing applicants to ensure they qualify for licensure or certification, and investigating all complaints, the consumer is the ultimate beneficiary because the increase in fees will allow the Board to continue these important functions.

The Board will benefit substantially from the fee increases and will be able to continue its licensing and oversight functions.

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

Technical and grammatical changes suggested by G.R.R.C. staff were made.

**11. A summary of the comments made regarding the rules and the agency's response to them:**

The Board received comments from two persons at its oral proceeding. One commenter expressed support for all of the fee changes.

Response: The Board appreciates the support.

Another commenter expressed support for all of the fee changes, except the change made for nursing care institution administrator examinations, an increase from \$250 to \$500. The commenter stated that an institution may not cover such an increase for an administrator going to work for the institution. The commenter further stated that the Board has not demonstrated that it needs the amount of the increase and that because there are only 475 administrators in this state, the increase would not substantially affect the Board's economic viability.

Response: The Board has not raised this fee since 1992. The Board provides regulatory oversight over two types of professionals, nursing care institution administrators and assisted living facility managers. As authorized by the legislature, it must obtain its operating costs from its fees. The Legislature determined more than eleven years ago that the Board's administrator exam fee could be raised to \$500 and it provided the Board with the statutory authority to charge \$500 for an administrator examination. The current administrator exam fee did not increase over time to cover the costs of inflation during the past eleven years or the Board's increased costs during that time. While the Board is sensitive to issues related to persons who are taking these examinations, it must raise its fees in order to continue its regulatory and oversight functions. It will not have the economic means to do so if it does not raise this fee and the other fees that are included in this rulemaking. The increase affects only those persons who will be taking examinations after the effective date of the rules, not current nursing care institution administrators.

**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. Were these rules previously adopted as emergency rules?**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS  
AND ASSISTED LIVING FACILITY MANAGERS**

Notices of Final Rulemaking

ARTICLE 1. GENERAL

Section

R4-33-104. ~~Reserved Fees~~

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section

R4-33-205. ~~Fees Repealed~~

ARTICLE 4. ADULT CARE HOME MANAGER CERTIFICATION

Section

R4-33-405. ~~Fees Repealed~~

ARTICLE 1. GENERAL

**R4-33-104. ~~Reserved Fees~~**

**A.** ~~For nursing care institution administrators, the Board shall charge the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:~~

- ~~1. Initial application, \$100~~
- ~~2. Examination, \$500~~
- ~~3. Readministering state examination, \$150~~
- ~~4. Issuance of a license, \$260~~
- ~~5. Duplicate license, \$50~~
- ~~6. Biennial active license renewal, \$300~~
- ~~7. Biennial inactive license renewal, \$100~~
- ~~8. Late renewal penalty, \$50~~
- ~~9. Temporary license, \$250~~
- ~~10. Certifying licensure status, \$10~~
- ~~11. Review sponsor's continuing education program, \$20.~~

**B.** ~~For assisted living facility managers, the Board shall charge the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:~~

- ~~1. Initial application, \$100~~
- ~~2. Examination, \$100~~
- ~~3. Readministering state examination, \$100~~
- ~~4. Issuance of a certificate, \$100~~
- ~~5. Duplicate certificate, \$50~~
- ~~6. Biennial certificate renewal, \$100~~
- ~~7. Late renewal penalty, \$50~~
- ~~8. Temporary certificate, \$50~~
- ~~9. Review sponsor's continuing education program, \$20.~~

**C.** ~~If the Board approves an applicant for a license and issues a license to the applicant for less than the biennial license period, the applicant shall submit to the Board \$11 for each month remaining in the licensure period.~~

**D.** ~~If the Board approves an applicant for a certificate and issues a certificate for less than the biennial certificate period, the applicant shall submit to the Board \$4 for each month remaining in the certificate period.~~

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

**R4-33-205. ~~Fees Repealed~~**

~~The Board shall charge and collect the following fees:~~

- ~~1. Application and examination for licensure, \$350; \$100 of this fee is nonrefundable:
  - ~~a. Re-administration of national examination, \$150;~~
  - ~~b. Re-administration of state examination, \$100;~~~~
- ~~2. Issuance of license, up to \$240, prorated monthly;~~
- ~~3. Biennial renewal of license, \$240;~~
- ~~4. Biennial renewal of inactive license, \$100;~~
- ~~5. Temporary license fee, \$250;~~
- ~~6. Duplicate license fee, \$25;~~
- ~~7. Penalty fee for late renewal, \$50;~~
- ~~8. Certification of license status, \$10; and~~
- ~~9. Board review of sponsored continuing education programs, \$20.~~

Notices of Final Rulemaking

ARTICLE 4. ADULT CARE HOME MANAGER CERTIFICATION

R4-33-405. Fees Repealed

Fees prescribed by the Board are as follows:

1. Examination for certification as an adult care home manager, \$40.00.
2. Issuance of adult care home manager certificate, \$100.00 prorated monthly.
3. Biennial renewal of adult care home manager certificate, \$100.00.
4. Biennial renewal of inactive adult care home manager certificate, \$25.00.
5. Temporary adult care home manager certification fee, \$25.00.
6. Penalty fee for late renewal, \$25.00.
7. Review of continuing education programs, \$20.00.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

PREAMBLE

1. Sections Affected

- R9-22-108
- Article 8
- R9-22-801
- R9-22-802
- R9-22-803
- R9-22-804
- Exhibit A
- Article 13
- R9-22-1301
- R9-22-1302
- R9-22-1303
- R9-22-1304
- R9-22-1305
- R9-22-1306
- R9-22-1307
- R9-22-1308
- R9-22-1309

Rulemaking Action

- Repeal

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(B)(4)  
 Implementing statute: A.R.S. § 36-2903.01(B)(4)

3. The effective date of the rules:

April 3, 2004

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 4394, October 10, 2003  
 Notice of Proposed Rulemaking: 9 A.A.R 4874, November 14, 2003

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

Name: Barbara Ledder  
 Address: AHCCCS  
 Office of Legal Assistance  
 701 E. Jefferson, Mail Drop 6200  
 Phoenix, AZ 85034  
 Telephone: (602) 417-4580  
 Fax: (602) 253-9115

Notices of Final Rulemaking

6. **An explanation of the rules, including the agency's reasons for initiating the rules:**  
Federal regulations implementing the Balanced Budget Act changed the states' Medicaid grievance and appeal systems for managed care. AHCCCS is repealing the rules. They are being moved to Chapter 34 and amended to conform to the new federal requirements and to make the rules more user friendly.
7. **A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The agency did not review any studies relevant to the rules.
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 information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34 and amended. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to AHCCCS, the Office of Administrative Hearings, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
The agency made minor technical changes at the suggestion of the Governor's Regulatory Review Council staff.
11. **A summary of the principal comments and the agency response to them:**  
The agency did not receive any comments.
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. **Were these rules previously adopted as emergency rules?**  
No
15. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section  
R9-22-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section  
R9-22-801. ~~General Provisions for a Grievance and a Request for Hearing~~ Repealed  
R9-22-802. ~~Grievance and Request for Hearing~~ Repealed  
R9-22-803. ~~Eligibility Hearing for an Applicant and a Member under R9-22-1435, 9 A.A.C. 22, Article 15, and R9-22-1704~~ Repealed  
R9-22-804. ~~Eligibility Hearing for an Applicant and a Member under 9 A.A.C. 22, Article 16~~ Repealed  
Exhibit A. ~~Grievance and Request for Hearing Process~~ Repealed

**ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

Section  
R9-22-1301. ~~General Intent and Definitions~~ Repealed  
R9-22-1302. ~~Denial of a Request for a Service~~ Repealed  
R9-22-1303. ~~Reduction, Suspension, or Termination of a Service~~ Repealed

Notices of Final Rulemaking

- R9-22-1304. ~~Content of Notice~~ Repealed
- R9-22-1305. ~~Exceptions from an Advance Notice~~ Repealed
- R9-22-1306. ~~Notice in a Case of Probable Fraud~~ Repealed
- R9-22-1307. ~~Expedited Hearing Process~~ Repealed
- R9-22-1308. ~~Maintenance of Records~~ Repealed
- R9-22-1309. ~~Member Handbook~~ Repealed

ARTICLE 1. DEFINITIONS

**R9-22-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed**

~~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:~~

~~“Administrative law judge” means the person defined in A.R.S. § 41-1092.~~

~~“Administrative review” means that portion of the grievance process beginning with the filing of a grievance with the Administration or its contractor and concluding with the issuance of a final decision by the Administration or its contractor that advises the party of formal hearing rights under A.R.S. § 41-1092 et seq.~~

~~“Complainant” means an applicant, member, person, or entity filing a grievance or request for hearing.~~

~~“Date of notice” means the date on a notice of action.~~

~~“Grievance” means a complaint that initiates an administrative review that does not involve a hearing under A.R.S. § 41-1092 et seq. A party may request a hearing under A.R.S. § 41-1092 et seq. after an administrative review.~~

~~“Hearing” means an administrative hearing under Title 41, Chapter 6, Article 10.~~

~~“OAH” means the Office of Administrative Hearings defined in A.R.S. § 41-1092 et seq.~~

~~“Party” means a person or entity by or against whom a grievance or request for hearing is brought.~~

~~“Respondent” means a party responsible for the adverse action that is the subject of a grievance or request for hearing.~~

**ARTICLE 8. ~~GRIEVANCE AND REQUEST FOR HEARING~~ REPEALED**

**R9-22-801. ~~General Provisions for a Grievance and a Request for Hearing~~ Repealed**

- A.** ~~Definitions. In this Article, “Adverse action” means any action under this Chapter for which a party may file a grievance or request a hearing under A.R.S. § 41-1092 et seq., under this Article.~~
- B.** ~~Filing a grievance and a request for hearing. Unless provided elsewhere in this Chapter, a written grievance or request for hearing under A.R.S. § 41-1092 et seq., or other written statements shall be considered filed when received by the Administration, as established by the Office of Legal Assistance’s date stamp on the grievance, request for hearing, or other written statement.~~
- C.** ~~Computation of time.~~
  - 1. ~~Computation of time for filing a grievance begins the day after the act, event, or decision grieved and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.~~
  - 2. ~~Timeliness for filing a request for hearing under A.R.S. § 41-1092 et seq. is computed under R2-19-107.~~
  - 3. ~~The 30-day time frame for filing a request for hearing under A.R.S. § 41-1092 et seq. begins with the date that the notice of adverse action is dated.~~
- D.** ~~Complainant’s hearing rights. The Administration shall allow a complainant the right to:~~
  - 1. ~~A hearing under A.R.S. § 41-1092 et seq.; and~~
  - 2. ~~Copies of any relevant document from the respondent not protected from disclosure by law at the complainant’s expense.~~
- E.** ~~Withdrawal or denial of a request for hearing.~~
  - 1. ~~Withdrawal of a request for hearing.~~
    - a. ~~The Administration shall accept a written request for withdrawal if the written request for withdrawal is received from the complainant before the Administration issues a notice of hearing under A.R.S. § 41-1092 et seq.~~
    - b. ~~If the Administration issued a notice of hearing under A.R.S. § 41-1092 et seq., a complainant shall send a request for withdrawal to OAH.~~
  - 2. ~~Denial of a request for hearing. The Administration may deny a request for hearing under A.R.S. § 41-1092 et seq. upon written determination that:~~
    - a. ~~The request for hearing is untimely;~~
    - b. ~~The request for hearing is not for an adverse action permitted under this Article;~~
    - c. ~~The complainant waives the right to a hearing;~~
    - d. ~~The request for hearing is moot, as determined by the Administration based on the factual circumstances of each case.~~

Notices of Final Rulemaking

- e. The subject matter of the grievance is a policy that is not subject to OAH's jurisdiction under A.R.S. § 41-1092 et seq.; or
  - f. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.
- F.** Motion for rehearing or review. Under A.R.S. § 41-1092.09, the Director may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
- 1. Irregularity in the proceedings of a hearing that deprived an aggrieved party of a fair hearing;
  - 2. Misconduct of the Administration, OAH, or a party;
  - 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  - 4. The decision is the result of passion or prejudice;
  - 5. The decision is not justified by the evidence or is contrary to law; or
  - 6. Good cause is established for the nonappearance of a party at the hearing.
- G.** Right to reapply. If a discontinuance or denial of eligibility is upheld under A.R.S. § 41-1092.08, the decision shall state that a complainant may reapply for AHCCCS eligibility.

**R9-22-802. Grievance and Request for Hearing Repealed**

**A. General:**

- 1. This Section provides the exclusive manner for filing a grievance against the Administration, its contractors, or both for any adverse action. The grievance process is illustrated in Exhibit A.
- 2. This Section shall not apply to an adverse action affecting a member's eligibility or to an adverse action that reduces a member's services as a result of a change in state or federal law.
- 3. If a hearing is requested, the hearing shall be conducted under A.R.S. § 41-1092.

**B. Grievance to the Administration or a contractor:**

- 1. Respondent:
  - a. Administration. When grieving the Administration's adverse action, the Administration is the respondent.
  - b. Contractor. When grieving a contractor's adverse action, the contractor is the respondent. The complainant shall file a grievance with the contractor responsible for the adverse action being grieved to allow the contractor to investigate and resolve the grievance.
- 2. Filing a grievance:
  - a. Member grievance:
    - i. A complainant shall file a grievance with the Administration or a contractor in writing or orally. An oral grievance shall be considered filed as of the date of the oral communication.
    - ii. A complainant shall file a grievance with the Administration or a contractor no later than 60 days after the date of notice of the adverse action.
    - iii. A grievance is not required to specify in detail the factual and legal basis for the grievance and the relief requested.
  - b. Grievance other than a member grievance:
    - i. A complainant shall file a grievance with the Administration or a contractor in writing.
    - ii. A complainant shall file a grievance with the Administration or a contractor no later than 60 days after the date of notice of the adverse action except as provided in subsection (B)(2)(b)(iii).
    - iii. A complainant shall file a grievance regarding a claim denial under the time frames in A.R.S. § 36-2904.
    - iv. A grievance shall specify in detail the factual and legal basis for the grievance and the relief requested. Failure to detail the factual or legal basis may result in the denial of a grievance.
- 3. Contractor's final decision of a grievance:
  - a. Contractor's final decision. The contractor shall issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the contractor, unless the complainant and contractor agree, in writing, to a longer period.
  - b. Contents of contractor's final decision. The contractor's final decision shall include:
    - i. The date of the decision;
    - ii. The factual and legal basis for the decision;
    - iii. The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and
    - iv. The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.
  - e. Request for hearing of contractor's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the contractor's final decision of the grievance if:
    - i. The complainant files a written request for hearing with the Administration no later than 30 days after the date of the contractor's final decision of the grievance; or
    - ii. A final decision of the grievance under subsection (B)(3)(a) is not rendered by the contractor within 30 days after the filing of the grievance with the contractor, and the complainant files a written request for hearing under A.R.S. § 41-1092 et seq. based on the contractor's failure or refusal to decide the grievance.

Notices of Final Rulemaking

4. Administration's final decision of grievance.
  - a. Administration's final decision. The Administration shall:
    - i. Issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the Administration, unless the complainant and Administration agree, in writing, to a longer period; or
    - ii. Issue a notice of hearing under A.R.S. § 41-1092.03.
  - b. Contents of Administration's final decision. The Administration's final decision shall include:
    - i. The date of the decision;
    - ii. The factual and legal basis for the decision;
    - iii. The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and
    - iv. The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.
  - c. Request for hearing of Administration's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the Administration's final decision of the grievance if:
    - i. The complainant files a written request for hearing with the Administration no later than 30 days after the date of the Administration's final decision of the grievance; or
    - ii. A final decision of the grievance under subsection (B)(4)(a) is not rendered by the Administration within 30 days after the filing of the grievance with the Administration, and the complainant files a written request for hearing with the Administration based on the Administration's failure or refusal to decide the grievance.
5. Notice of hearing. The Administration shall issue a notice of hearing under A.R.S. § 41-1092.05 if the Administration or a contractor receives a timely request for hearing after the Administration or a contractor issues its final decision of grievance.

**R9-22-803. Eligibility Hearing for an Applicant and a Member under R9-22-1435, 9 A.A.C. 22, Article 15, and R9-22-1704 Repealed**

**A. Adverse eligibility actions.**

1. A member or applicant may request a hearing under A.R.S. § 41-1092 et seq. on any of the following adverse eligibility actions:
  - a. Denial of eligibility. A denial of eligibility is an adverse action that an applicant is ineligible for AHCCCS;
  - b. Discontinuance of eligibility. A discontinuance of eligibility is a termination of an AHCCCS member's eligibility;
  - c. Delay in the eligibility determination beyond the 45- or 90-day time frame in R9-22-1502 from the date of application, unless the applicant or representative agrees to a written extension of time; or
  - d. Adverse disability determination for an applicant under 9 A.A.C. 22, Article 15.
2. When requesting a hearing regarding an adverse eligibility action under this Section, the Administration is the respondent.

**B. Request for hearing of an adverse eligibility action.**

1. Requesting a hearing. A complainant may request a hearing under A.R.S. § 41-1092 et seq. for an adverse eligibility action no later than 30 days after the Administration's adverse eligibility action by:
  - a. Submitting a request for hearing under A.R.S. § 41-1092 et seq. to the Administration; or
  - b. Submitting a written request to the Administration that contains the following information:
    - i. The case name;
    - ii. The adverse eligibility action, and
    - iii. The reason for the hearing.
2. Notice of hearing. The Administration shall issue a notice of hearing under A.R.S. § 41-1092.05 if the Administration receives a timely request for hearing.

**C. AHCCCS coverage and benefits during the hearing process under A.R.S. § 41-1092 et seq.**

1. For a discontinuance action that requires 10-day advance notice, a member whose request for hearing is filed before the effective date of the discontinuance shall continue to receive AHCCCS coverage until a final administrative decision is rendered under A.R.S. § 41-1092.08. A member may waive coverage while the administrative decision is pending.
2. A member whose benefits are continued may be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision is upheld under A.R.S. § 41-1092.08.
3. A member who requests a hearing regarding the termination of family planning services under R9-22-1435 or the guaranteed enrollment period under R9-22-1704 shall not continue to be AHCCCS eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the decision under A.R.S. § 41-1092.08.

**D. Effective date of an overturned denial of AHCCCS eligibility. If a denial of eligibility is overturned during the hearing process, the applicable effective date of AHCCCS eligibility shall be set forth in the decision under A.R.S. § 41-1092.08.**

**R9-22-804. Eligibility Hearing for an Applicant and a Member under 9 A.A.C. 22, Article 16 Repealed**

**A. County adverse eligibility actions:**

1. A member or applicant under 9 A.A.C. 22, Article 16 may request a hearing under A.R.S. § 41-1092 et seq. on any of the following adverse eligibility actions:
  - a. Denial of eligibility. The county's denial of eligibility of:
    - i. An initial application, or
    - ii. A redetermination of eligibility if the redetermination of eligibility does not terminate coverage before the end of a current certification period;
  - b. The county's discontinuance of a member's coverage before the end of the member's current certification period;
  - c. The county's delay in an eligibility determination beyond 30 days after the date of application unless the head-of-household agrees to a written extension of time; or
  - d. The county's approval of a certification period ending less than 6 full calendar months following the date of determination of eligibility under R9-22-1615.
2. If the county eligibility staff acquires new information that reverses the denial under subsection (A)(1)(a) or discontinuance under subsection (A)(1)(b), the county eligibility staff shall cancel the adverse eligibility action and render a new eligibility action under the requirements specified in 9 A.A.C. 22, Article 16. The county eligibility staff's final eligibility determination is the effective date of AHCCCS eligibility under this subsection.
3. When requesting a hearing regarding an adverse eligibility action under this Section, the county is the respondent.

**B. Request for hearing of a county's adverse eligibility action:**

1. Requesting a hearing. A complainant may request a hearing under A.R.S. § 41-1092 et seq. for an adverse eligibility action no later than 30 days after the Administration's adverse eligibility action by:
  - a. Submitting a request for hearing under A.R.S. § 41-1092 et seq. to the Administration; or
  - b. Submitting a written request to the Administration that contains the following information:
    - i. The case name;
    - ii. The adverse eligibility action, and
    - iii. The reason for the hearing.
2. Notice of hearing. The Administration shall issue a notice of hearing under A.R.S. § 41-1092.05 if the Administration receives a timely request for hearing.
3. The county eligibility staff's action, under subsection (A)(2), to cancel the adverse eligibility action and render a new determination is not a disposition of a pending request for hearing under A.R.S. § 41-1092 et seq.

**C. County responsibilities:**

1. The county eligibility staff shall maintain a register documenting the date a request for hearing under A.R.S. § 41-1092 et seq. is received by county eligibility staff.
2. If requested, county eligibility staff shall assist a complainant or designated representative in completing a request for hearing under A.R.S. § 41-1092 et seq.
3. The county eligibility staff shall complete a pre-hearing summary that summarizes the factual basis for an adverse eligibility action described in subsection (A)(1) and which is the basis of a request for hearing under A.R.S. § 41-1092 et seq.
4. County eligibility staff shall send to the Administration a pre-hearing summary, a copy of the case file, and the request for hearing under A.R.S. § 41-1092 et seq.:
  - a. To ensure that the Administration receives the materials no later than 10 days after the date the county received the complainant's request for hearing under A.R.S. § 41-1092 et seq.; or
  - b. Ten days after the date the Administration requests the materials, for a request for hearing under A.R.S. § 41-1092 et seq. submitted directly to the Administration.

**D. AHCCCS coverage and benefits during the hearing process under A.R.S. § 41-1092 et seq.**

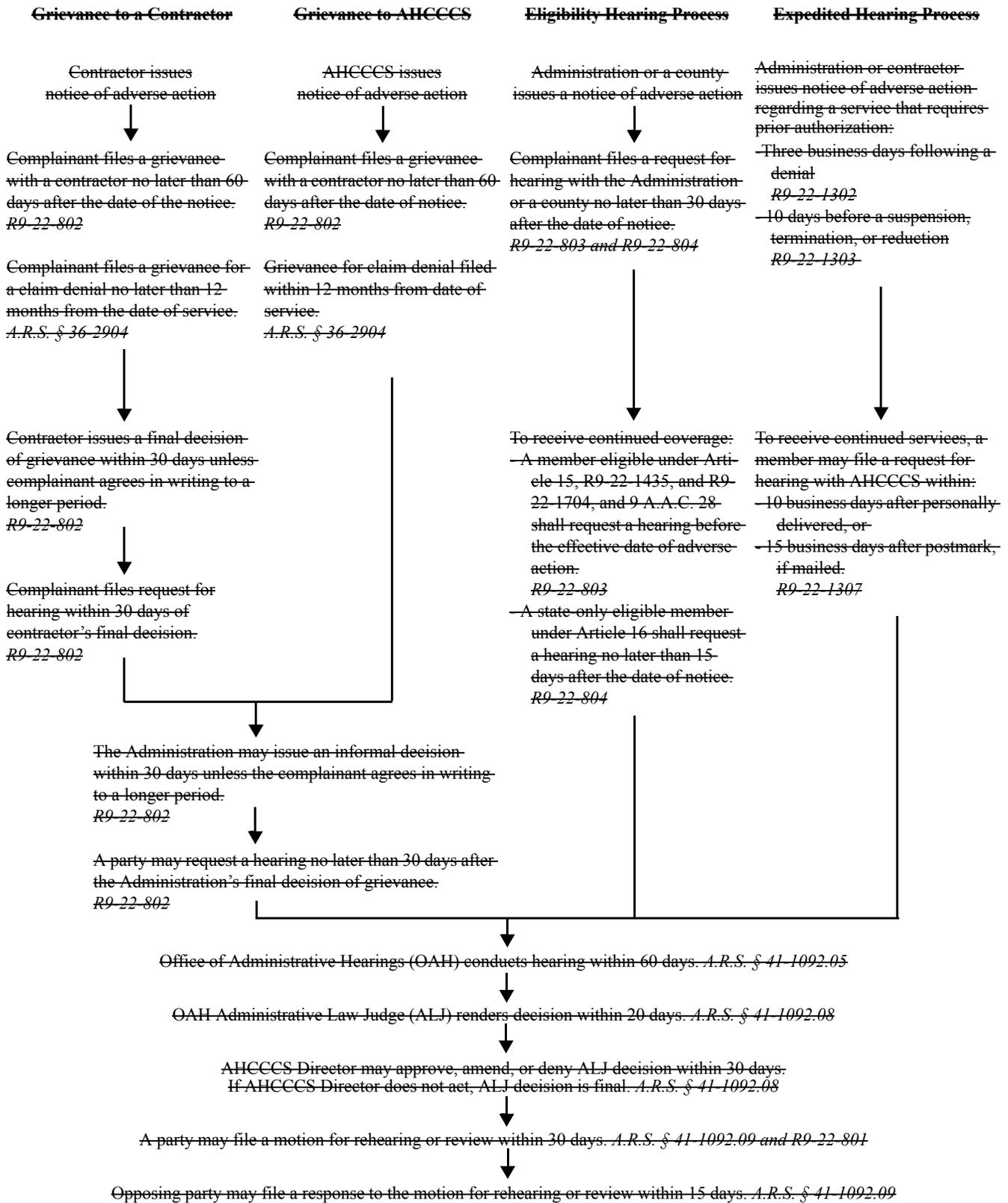
1. A member who requests a hearing regarding a discontinuance of MI/MN or ELIC coverage no later than 15 days after the date of notice of the adverse action shall continue to receive AHCCCS coverage until the earlier of:
  - a. A final administrative decision is rendered under A.R.S. § 41-1092.08, or
  - b. The end of the certification period described in R9-22-1615.
2. A member whose coverage is continued under subsection (D)(1) may be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision is upheld under A.R.S. § 41-1092.08.

**E. Effective date of an overturned denial of AHCCCS eligibility:**

1. Initial application. The effective date of a denial of an initial application is the date of the notice of action of eligibility. If the denial of an initial application is overturned during the hearing process, the applicable effective date of AHCCCS eligibility shall be set forth in the decision under A.R.S. § 41-1092 et seq.
2. Redetermination. The effective date of a denial of an eligibility redetermination is the last day of the final month of the person's current certification period. A member or applicant who requests a hearing under A.R.S. § 41-1092 et seq. regarding a denial of an eligibility redetermination shall not continue to be AHCCCS eligible after the end of the current certification period. If the denial of an eligibility redetermination is overturned during the hearing process, the applicable effective date of AHCCCS eligibility shall be set forth in the decision.

**Notices of Final Rulemaking**

**Exhibit A. Grievance and Request for Hearing Process Repealed**



**ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

**R9-22-1301. General Intent and Definitions Repealed**

**A. General:**

1. This Article defines the notice and expedited request for hearing under A.R.S. § 41-1092 et seq. process when the Administration or a contractor denies, reduces, suspends, or terminates a service that requires prior authorization. This Article provides an expedited hearing request process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 22, Article 8. The expedited hearing request process is illustrated in 9 A.A.C. 22, Article 8, Exhibit A.
2. The 30-day time frame for filing a request for hearing under A.R.S. § 41-1092 et seq. begins with the date that the notice of adverse action is dated.

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

“Action” means a denial, termination, suspension, or reduction of a service.

“Contractor” means a health plan, ALTCS program contractor, the Arizona Department of Health Services Division of Behavioral Health Services, or a Tribal or Regional Behavioral Health Authority.

“Notice” means a written statement that meets the requirements specified in R9-22-1304.

“Party” means a member, contractor, or the Administration.

**R9-22-1302. Denial of a Request for a Service Repealed**

The Administration or a contractor shall provide a member with written notice no later than 3 business days after the date the Administration or a contractor denies authorization for a requested service that the member does not currently receive.

**R9-22-1303. Reduction, Suspension, or Termination of a Service Repealed**

Except as permitted under R9-22-1305 and R9-22-1306, if the Administration or contractor reduces, suspends, or terminates a service currently provided by the Administration or contractor, the Administration or contractor shall provide the member written notice at least 10 days before the effective date of the intended action.

**R9-22-1304. Content of Notice Repealed**

A notice required under R9-22-1302 or R9-22-1303 shall contain the following:

1. A statement of the action the Administration or a contractor has taken or intends to take;
2. The specific reason for the action, including the facts, specific to the member, that support the action;
3. The specific law, rule, or other written policy, standards, or criteria that support the action, or the specific change in federal or state law that authorizes the action;
4. An explanation of:
  - a. A member's right to request an evidentiary hearing under A.R.S. § 41-1092 et seq.; and
  - b. The circumstances under which the Administration or a contractor shall grant a hearing under A.R.S. § 41-1092 et seq. for an action based on a change in the law; and
5. An explanation of the circumstance under which the Administration or a contractor shall continue a covered service if a member requests a hearing regarding a service that is:
  - a. Reduced;
  - b. Suspended; or
  - c. Terminated.

**R9-22-1305. Exceptions from an Advance Notice Repealed**

The Administration or a contractor may mail a notice for a reduction, suspension, or termination of a service no later than the date of the Administration's or a contractor's action if the Administration or a contractor:

1. Has factual information confirming the death of a member;
2. Receives a written statement signed by the member that:
  - a. States services are no longer wanted; or
  - b. Provides information that requires a reduction or termination of a service and indicates that the member understands that a reduction or termination of a service shall be the result of that information;
3. Learns that a member has been admitted to an institution that makes the member ineligible for services;
4. Does not know the member's whereabouts and mail directed to the member is returned by the post office and no forwarding address is provided;
5. Has established the fact that the member has been approved for Medicaid services outside the state of Arizona;
6. Knows that a member's primary care provider has prescribed a change in the level of medical care; or
7. Knows the notice involves an adverse determination for preadmission screening requirements specified in A.R.S. § 36-2936 for an ALTCS member.

**R9-22-1306. ~~Notice in a Case of Probable Fraud Repealed~~**

The Administration or a contractor may shorten the advance notice period to 5 days before the date of action if:

1. The circumstances indicate that action should be taken because of probable fraud by a member; and
2. The facts have been verified through collateral resources, if possible.

**R9-22-1307. ~~Expedited Hearing Process Repealed~~**

**A.** Request for expedited hearing:

1. A member is entitled to an expedited hearing if:
  - a. The Administration or contractor denies, reduces, suspends, or terminates a service that requires authorization by either the Administration or the contractor; and
  - b. The member files the request for expedited hearing with the Administration or the contractor:
    - i. No later than 10 business days after personal delivery of the notice of action; or
    - ii. No later than 15 business days after the postmark date, if mailed, of the notice of action.
2. A member who files a request for expedited hearing may continue to receive the service as specified in subsection (D) pending a hearing decision under A.R.S. § 41-1092.08 if:
  - a. The Administration or contractor reduces, suspends, or terminates a service that requires authorization by either the Administration or contractor; and
  - b. The member files a request for continued services at the same time that the member files the request for expedited hearing specified in subsection (A)(1)(b).

**B.** Expedited hearing:

1. A hearing under subsection (A) shall be held no sooner than 20 days, and no later than 40 days after the Administration or contractor receives the request for expedited hearing; or
2. A hearing may be held sooner than 20 days if:
  - a. A request for hearing under A.R.S. § 41-1092 et seq. is filed with the Administration or contractor; and
  - b. All the parties agree, in writing; or
  - c. Upon motion of 1 of the parties under A.R.S. § 41-1092.05.

**C.** Notice of hearing date. The Administration shall provide notice of the hearing date under A.R.S. § 41-1092 et seq. to the member or the authorized representative and to all other parties to the hearing.

**D.** Continued services. If a request for expedited hearing under A.R.S. § 41-1092 et seq. and a request for continued services is timely filed under this Section, the Administration or a contractor shall not terminate, reduce, or suspend the service during the expedited hearing process.

**E.** Previously authorized service:

1. In addition to services that are continued under subsection (D), the Administration or contractor shall continue services pending a hearing decision under A.R.S. § 41-1092.08 if:
  - a. The Administration or contractor denies an authorization for a previously authorized service for the member because the Administration or contractor considers the service new and independent of any previous authorization; and
  - b. The member's primary care physician asserts that the requested service is a necessary continuation of the previous authorization; and
  - c. The member challenges the denial on this basis and timely requests continued services.
2. Services shall not be continued if:
  - a. The parties reach a written agreement, or
  - b. The Administration or contractor believes the primary care provider's request endangers the member.

**F.** Financial liability of a member. A member whose service is continued pending a hearing decision under A.R.S. § 41-1092.08 is financially liable for the service received if a decision to reduce, suspend, or terminate is upheld under A.R.S. § 41-1092.08.

**G.** General provisions. If an expedited hearing is requested, the hearing shall be conducted under A.R.S. § 41-1092 et seq.

**H.** Alternative hearing process. A request for expedited hearing shall be considered a grievance under 9 A.A.C. 22, Article 8, and the Administration shall forward the request for hearing to the contractor within 10 business days after the day the Administration receives the request if:

1. The Administration determines that the request for expedited hearing filed under this Section is not timely, as determined by the Office of Legal Assistance's date stamp on the request; or
2. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.

**R9-22-1308. ~~Maintenance of Records Repealed~~**

The Administration or contractor shall maintain records of the written notification and the date of the notice under R9-22-1302 and R9-22-1303 given to each member.

Notices of Final Rulemaking

**R9-22-1309. ~~Member Handbook Repealed~~**

~~A contractor shall furnish each member with a handbook, as specified in contract, that explains a member's right to file a grievance or request a hearing under A.R.S. § 41-1092 et seq. concerning an action that affects a member's receipt of medical services.~~

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
HEALTH CARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

**PREAMBLE**

- 1. Sections Affected**

Article 6	<b><u>Rulemaking Action</u></b>
R9-27-601	Repeal
	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-2903.01(B)(4) and 36-2912(H)(5)  
Implementing statutes: A.R.S. §§ 36-2903.01(B)(4) and 36-2912(H)(5)
- 3. The effective date of the rule:**

April 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4566, October 24, 2003  
Notice of Proposed Rulemaking: 9 A.A.R. 4884, November 14, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Barbara Ledder
Address:	AHCCCS Office of Legal Assistance 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4580
Fax:	(602) 253-9115
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

Federal regulations implementing the Balanced Budget Act changed the states' Medicaid grievance and appeal systems for managed care. AHCCCS is repealing the rules. They are being moved to Chapter 34 and amended to conform to the new federal requirements and to make the rules more user friendly.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review any studies relevant to this rule.
- 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 information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34 and amended. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearings, and AHCCCS contractors from resolving expedited hearings within a 3-day time-frame as required in Articles 2 and 3.

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

The agency made minor technical changes at the suggestion of the Governor's Regulatory Review Council staff.

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

The agency did not receive any comments.

**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 rule:**

None

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

No

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
HEALTH CARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

**ARTICLE 6. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section

R9-27-601. Grievance and Request for Hearing Repealed

**ARTICLE 6. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

**R9-27-601. Grievance and Request for Hearing Repealed**

**A. General:**

1. ~~This Article provides the exclusive manner for filing a grievance or request for hearing against the HCGA, the HCG Plans, or both for any adverse action.~~
2. ~~If a hearing is requested, the hearing shall be conducted under A.R.S. § 41-1092 et seq.~~

**B. Filing a grievance and a request for hearing.** ~~Unless provided elsewhere in this Chapter, a written grievance or a request for hearing under A.R.S. § 41-1092 et seq., or other written statements shall be considered filed when received by the HCGA, as established by the HCGA's date stamp on the grievance, request for hearing, or other written statement.~~

**C. Computation of time:**

1. ~~Computation of time for filing a grievance begins the day after the act, event, or decision grieved and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.~~
2. ~~Timeliness for filing a request for hearing under A.R.S. § 41-1092 et seq. is computed under R2-19-107.~~

**D. Complainant's hearing rights.** ~~The HCGA shall allow a complainant the right to:~~

1. ~~A hearing under A.R.S. § 41-1092 et seq.; and~~
2. ~~Copies of any relevant document from the respondent not protected from disclosure by law at the complainant's expense.~~

**E. Withdrawal or denial of a request for hearing:**

1. ~~Withdrawal of a request for hearing:~~
  - a. ~~The HCGA shall accept a written request for withdrawal if the written request for withdrawal is received from the complainant before the HCGA or its designee issues a notice of hearing under A.R.S. § 41-1092 et seq.~~
  - b. ~~If the HCGA or its designee issued a notice of hearing under A.R.S. § 41-1092 et seq., a complainant shall send a request for withdrawal to OAH.~~
2. ~~Denial of a request for hearing.~~ ~~The HCGA or its designee may deny a request for hearing under A.R.S. § 41-1092 et seq. upon written determination that:~~
  - a. ~~The request for hearing is untimely;~~
  - b. ~~The request for hearing is not for an adverse action permitted under this Article;~~
  - c. ~~The complainant waives the right to hearing;~~
  - d. ~~The request for hearing is moot, as determined by HCGA or its designee based on the factual circumstances of each case;~~
  - e. ~~The subject matter of the grievance is a policy that is not subject to OAH's jurisdiction under A.R.S. § 41-1092 et seq.; or~~

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- f. ~~The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all members.~~
- F. ~~Motion for rehearing or review. Under A.R.S. § 41-1092.09, the HCGA may grant a rehearing or review for any of the following reasons materially affecting a party's rights:~~
  - 1. ~~Irregularity in the proceedings of a hearing that deprived an aggrieved party of a fair hearing;~~
  - 2. ~~Misconduct of the HCGA, OAH, or a party;~~
  - 3. ~~Newly discovered material evidence, that could not, with reasonable diligence, have been discovered and produced at the hearing;~~
  - 4. ~~The decision is the result of passion or prejudice;~~
  - 5. ~~The decision is not justified by the evidence or is contrary to law; or~~
  - 6. ~~Good cause is established for the nonappearance of a party at the hearing.~~
- G. ~~Grievance to the HCGA or an HCG Plan.~~
  - 1. ~~Respondent:~~
    - a. ~~HCGA. When grieving the HCGA's adverse action, the HCGA is the respondent.~~
    - b. ~~HCG Plan. When grieving an HCG Plan's adverse action, the HCG Plan is the respondent. The complainant shall file a grievance with the HCG Plan responsible for the adverse action being grieved to allow the HCG Plan to investigate and resolve the grievance.~~
  - 2. ~~Filing a grievance.~~
    - a. ~~Member grievance:~~
      - i. ~~A complainant shall file a grievance with the HCGA or an HCG Plan in writing or orally. An oral grievance shall be considered filed as of the date of the oral communication.~~
      - ii. ~~A complainant shall file a grievance with the HCGA or an HCG Plan no later than 60 days after the date of notice of the adverse action.~~
      - iii. ~~A grievance is not required to specify in detail the factual and legal basis for the grievance and the relief requested.~~
    - b. ~~Grievance other than a member grievance:~~
      - i. ~~A complainant shall file a grievance with the HCGA or an HCG Plan in writing.~~
      - ii. ~~A complainant shall file a grievance with the HCGA or an HCG Plan no later than 60 days after the date of notice of the adverse action except as provided in subsection (G)(2)(b)(iii).~~
      - iii. ~~A complainant shall file a grievance regarding a claim denial under the time frames in A.R.S. § 36-2904.~~
      - iv. ~~A grievance shall specify in detail the factual and legal basis for the grievance and the relief requested. Failure to detail the factual or legal basis may result in the denial of a grievance.~~
  - 3. ~~HCG Plan's final decision of a grievance.~~
    - a. ~~HCG Plan's final decision. The HCG Plan shall issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the HCG Plan, unless the complainant and HCG Plan agree, in writing, to a longer period.~~
    - b. ~~Contents of HCG Plan's final decision. The HCG Plan's final decision shall include:~~
      - i. ~~The date of the decision;~~
      - ii. ~~The factual and legal basis for the decision;~~
      - iii. ~~The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and~~
      - iv. ~~The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.~~
    - e. ~~Request for hearing of HCG Plan's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the HCG Plan's final decision of the grievance if:~~
      - i. ~~The complainant files a written request for hearing with the HCGA no later than 30 days after the date of the HCG Plan's final decision of the grievance; or~~
      - ii. ~~A final decision of the grievance under subsection (G)(3)(a) is not rendered by the HCG Plan within 30 days after the filing of the grievance with the HCG Plan, and the complainant files a written request for hearing under A.R.S. § 41-1092 et seq. based on the HCG Plan's failure or refusal to decide the grievance.~~
  - 4. ~~HCGA's final decision of grievance.~~
    - a. ~~HCGA's final decision. The HCGA or its designee shall:~~
      - i. ~~Issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the HCGA, unless the complainant and HCGA agree, in writing, to a longer period; or~~
      - ii. ~~Issue a notice of hearing under A.R.S. § 41-1092.03.~~
    - b. ~~Contents of HCGA's final decision. The HCGA's final decision shall include:~~
      - i. ~~The date of the decision;~~
      - ii. ~~The factual and legal basis for the decision;~~
      - iii. ~~The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and~~
      - iv. ~~The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.~~

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- e. ~~Request for hearing of HCGA's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the HCGA's final decision of the grievance if:~~
  - i. ~~The complainant files a written request for hearing with the HCGA no later than 30 days after the date of the HCGA's final decision of the grievance; or~~
  - ii. ~~A final decision of the grievance under subsection (G)(4)(a) is not rendered by the HCGA within 30 days after the filing of the grievance with the HCGA, and the complainant files a written request for hearing with the HCGA based on the HCGA's failure or refusal to decide the grievance.~~
- 5. ~~Notice of hearing. The HCGA shall issue a notice of hearing under A.R.S. § 41-1092.05 if the HCGA or an HCG Plan receives a timely request for hearing after the HCGA or an HCG Plan issues its final decision of grievance.~~

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

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

**PREAMBLE**

- 1. Sections Affected**

R9-28-108	Repeal
Article 8	Repeal
R9-28-801	Repeal
R9-28-802	Repeal
R9-28-803	Repeal
Article 12	Repeal
R9-28-1201	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2932(H)(1)  
Implementing statute: A.R.S. § 36-2932(H)(1)
- 3. The effective date of the rules:**

April 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4394, October 10, 2003  
Notice of Proposed Rulemaking: 9 A.A.R. 4888, November 14, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

Federal regulations implementing the Balanced Budget Act changed the states' Medicaid grievance and appeal systems for managed care. AHCCCS is repealing the rules. They are being moved to Chapter 34 and amended to conform to the new federal requirements and to make the rules more user friendly.
- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review any studies relevant to these rules.

Notices of Final Rulemaking

**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 information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34 and amended. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearings, and AHCCCS contractors from resolving expedited hearings within a 3-day time-frame as required in Articles 2 and 3.

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

The agency made minor technical changes at the suggestion of Governor's Regulatory Review Council staff.

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

The agency did not receive any comments.

**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. Were these rules previously adopted as emergency rules?**

None

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

**TITLE 9. HEALTH SERVICES**

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

**ARTICLE 1. DEFINITIONS**

Section

R9-28-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section

R9-28-801. ~~General Provisions for a Grievance and a Request for Hearing~~ Repealed

R9-28-802. ~~Grievance~~ Repealed

R9-28-803. ~~Eligibility Hearing for an Applicant or a Member under 9 A.A.C. 28, Article 4~~ Repealed

**ARTICLE 12. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

Section

R9-28-1201. ~~Rights and Responsibilities for Expedited Hearings~~ Repealed

**ARTICLE 1. DEFINITIONS**

~~R9-28-108. Grievance and Request for Hearing Related Definitions~~ Repealed

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1 have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Grievance” is defined in 9 A.A.C. 22, Article 1.

“Hearing” is defined in 9 A.A.C. 22, Article 1.

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

~~R9-28-801. General Provisions for a Grievance and a Request for Hearing~~ Repealed

~~A grievance and a request for hearing under this Chapter shall comply with A.A.C. R9-22-801.~~

~~R9-28-802. Grievance~~ Repealed

~~A grievance and request for hearing under this Chapter shall comply with A.A.C. R9-22-802.~~

Notices of Final Rulemaking

**R9-28-803. ~~Eligibility Hearing for an Applicant or a Member under 9 A.A.C. 28, Article 4~~ Repealed**

- A.** General. Except as provided in this Section, an eligibility hearing for an applicant or a member under this Chapter shall comply with A.A.C. R9-22-803.
- B.** Adverse eligibility actions. An applicant or member may request a hearing under A.R.S. § 41-1092 et seq. regarding:
1. An adverse eligibility action specified in A.A.C. R9-22-803; or
  2. An increase in the member's post-eligibility treatment of income (share-of-cost). When the request for hearing under A.R.S. § 41-1092 et seq. is filed before the effective date of the increased share-of-cost, the share-of-cost shall not be increased until a final administrative decision is rendered under A.R.S. § 41-1092.08.

**ARTICLE 12. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

**R9-28-1201. ~~Rights and Responsibilities for Expedited Hearings~~ Repealed**

The Administration and its contractors shall comply with the requirements in 9 A.A.C. 22, Article 13.

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM**

**PREAMBLE**

**1. Sections Affected**

R9-31-108  
Article 8  
R9-31-801  
R9-31-802  
R9-31-803  
Exhibit A  
Article 13  
R9-31-1301  
R9-31-1302  
R9-31-1303  
R9-31-1304  
R9-31-1305  
R9-31-1306  
R9-31-1307  
R9-31-1308  
R9-31-1309

**Rulemaking Action**

Repeal  
Repeal

**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. § 36-2986(L)(2)

Implementing statute: A.R.S. § 36-2986(L)(2)

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

April 3, 2004

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 4395, October 10, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 4891, November 14, 2003

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

Name: Barbara Ledder

Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034

Telephone: (602) 417-4580

Fax: (602) 253-9115

Notices of Final Rulemaking

6. **An explanation of the rules, including the agency's reasons for initiating the rules:**  
Federal regulations implementing the Balanced Budget Act changed the states' Medicaid grievance and appeal systems for managed care. AHCCCS is repealing the rules. They are being moved to Chapter 34 and amended to conform to the new federal requirements and to make the rules more user friendly.
7. **A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The agency did not review any studies relevant to these rules.
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 information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34 and amended. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearing, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
The agency made minor technical changes at the suggestion of Governor's Regulatory Review Council staff.
11. **A summary of the principal comments and the agency response to them:**  
The agency did not receive any comments.
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. **Were these rules previously adopted as emergency rules?**  
No
15. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 1. DEFINITIONS

Section  
R9-31-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section  
R9-31-801. ~~General Provisions For a Grievance and Request for Hearing~~ Repealed  
R9-31-802. ~~Grievance~~ Repealed  
R9-31-803. ~~Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 31, Article 3~~ Repealed  
Exhibit A. ~~Grievance and Request for Hearing Process~~ Repealed

**ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

Section  
R9-31-1301. ~~General Provisions~~ Repealed  
R9-31-1302. ~~Denial of a Request for a Service~~ Repealed  
R9-31-1303. ~~Reduction, Suspension, or Termination of a Service~~ Repealed  
R9-31-1304. ~~Content of Notice~~ Repealed  
R9-31-1305. ~~Exceptions from an Advance Notice~~ Repealed

Notices of Final Rulemaking

- R9-31-1306. ~~Notice in a Case of Probable Fraud Repealed~~
- R9-31-1307. ~~Expedited Hearing Process Repealed~~
- R9-31-1308. ~~Maintenance of Records Repealed~~
- R9-31-1309. ~~Member Handbook Repealed~~

ARTICLE 1. DEFINITIONS

**R9-31-108. ~~Grievance and Request for Hearing Related Definitions Repealed~~**

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

~~“Adverse action” means any action under this Chapter for which a party may file a grievance or request a hearing under this 9 A.A.C. 31, Article 8.~~

~~“Grievance” is defined in 9 A.A.C. 22, Article 1.~~

~~“Hearing” is defined in 9 A.A.C. 22, Article 1.~~

~~“Respondent” is defined in 9 A.A.C. 22, Article 1.~~

ARTICLE 8. ~~GRIEVANCE AND REQUEST FOR HEARING REPEALED~~

**R9-31-801. ~~General Provisions For a Grievance and Request for Hearing Repealed~~**

- ~~A. A grievance and a request for hearing under this Chapter shall comply with R9-22-801.~~
- ~~B. In addition to the reasons in R9-22-801, the Administration may deny a request for a hearing if the program reaches the maximum number of members under A.R.S. § 36-2985.~~

**R9-31-802. ~~Grievance Repealed~~**

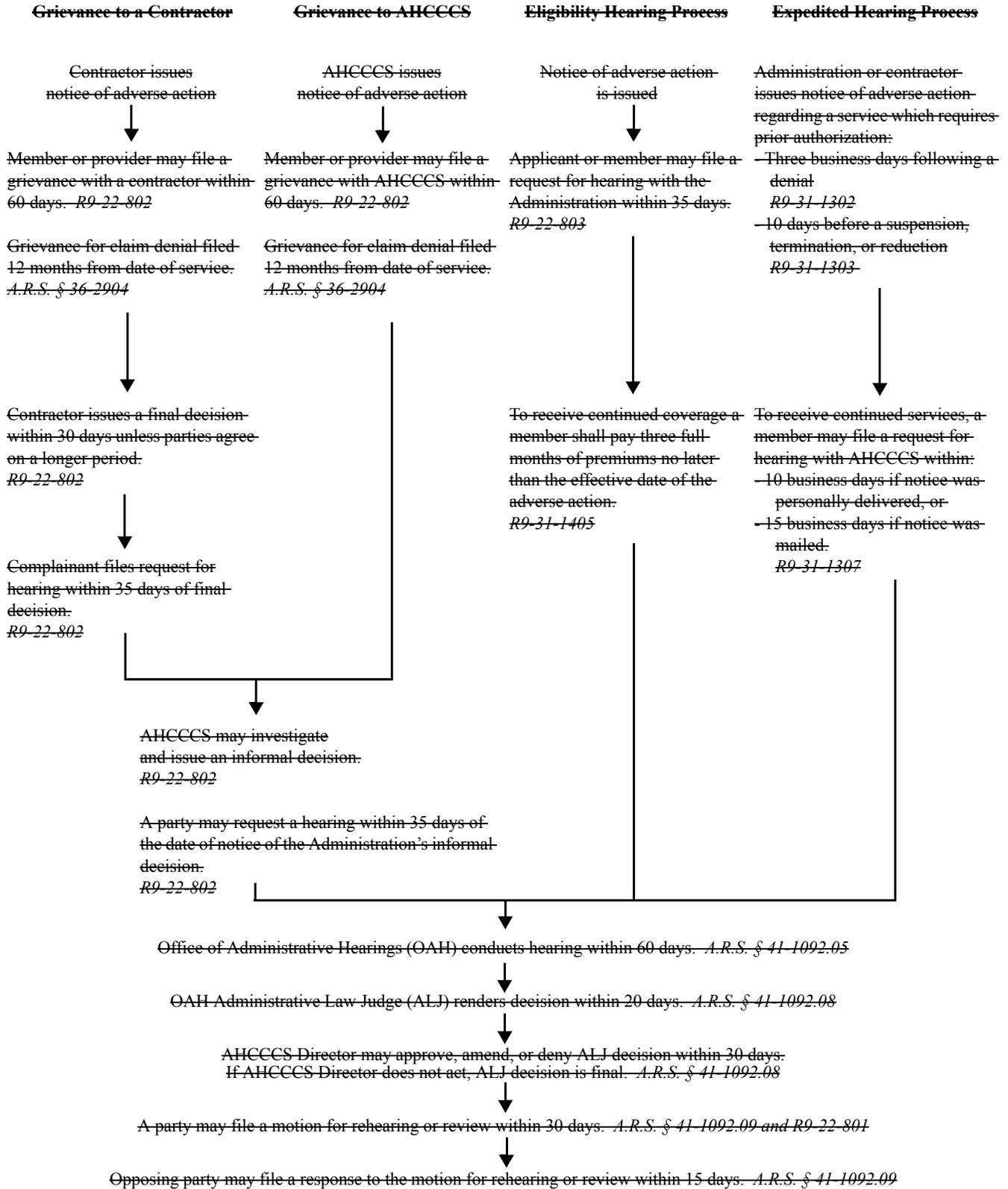
- ~~A. General. A grievance under this Chapter shall be filed and processed under R9-22-802. The grievance process is illustrated in Exhibit A.~~
- ~~B. Grievance filed by a parent or a legal guardian.
  - 1. A parent or a legal guardian of an applicant or a member may file a grievance under R9-22-802 on behalf of the applicant or the member.
  - 2. A parent or a legal guardian who receives coverage under A.R.S. § 36-2984 may file a grievance on their own behalf regarding a denial of a covered service.~~
- ~~C. Grievance filed by a provider.
  - 1. A provider may file a grievance regarding a denial of a claim for a covered service for a member.
  - 2. A provider may file a grievance regarding a denial of a claim for a covered service for a parent or a legal guardian who receives coverage under A.R.S. § 36-2984.~~

**R9-31-803. ~~Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 31, Article 3 Repealed~~**

- ~~A. General. Except as provided in this Section, an eligibility hearing for an applicant or a member under this Chapter shall comply with R9-22-803.~~
- ~~B. Adverse eligibility actions.
  - 1. In addition to adverse eligibility actions in R9-22-803, an applicant or member may request a hearing for:
    - a. A delay in the eligibility determination time frame under R9-31-302; or,
    - b. The determination of or payment of a premium amount under 9 A.A.C. 31, Article 14.
  - 2. Except when filed on behalf of an applicant or member, a parent or legal guardian may not file a request for hearing concerning any adverse eligibility action.~~
- ~~C. Filing a request for hearing. A request for hearing shall be considered filed when received in writing by the Administration, as established by the Office of Legal Assistance’s date stamp on the document.~~

**Notices of Final Rulemaking**

**Exhibit A. Grievance and Request for Hearing Process Repealed**



**ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

**R9-31-1301. General Provisions Repealed**

- ~~A.~~ The Administration shall administer the program as specified in A.R.S. § 36-2982.
- ~~B.~~ The Director has full operational authority to adopt rules or to use the appropriate rules adopted as specified in A.R.S. § 36-2986.
- ~~C.~~ This Article defines the notice and expedited hearing process when a contractor denies, reduces, suspends, or terminates a service that requires prior authorization. This Article provides an expedited hearing process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 31, Article 8. The expedited hearing process is illustrated in 9 A.A.C. 31, Article 8, Exhibit A.
- ~~D.~~ For the purpose of this Article,
- “Action” means a denial, termination, suspension, or reduction of a service.
- “Contractor” means a health plan, a qualifying plan, TRBHA, a RBHA, or ADHS Division of Behavioral Health Services.
- “Notice” means a written statement that meets the requirements specified in R9-31-1304.
- “Party” means a member or a contractor.

**R9-31-1302. Denial of a Request for a Service Repealed**

A contractor shall provide a member with written notice no later than 3 business days after the date a contractor denies authorization for a requested service that the member does not currently receive.

**R9-31-1303. Reduction, Suspension, or Termination of a Service Repealed**

Except as permitted under R9-31-1305 and R9-31-1306, if a contractor reduces, suspends, or terminates a service currently provided by the contractor, a contractor shall provide a member with a written notice at least 10 days before the effective date of the intended action.

**R9-31-1304. Content of Notice Repealed**

A notice required under R9-31-1302 or R9-31-1303 shall contain the following:

1. A statement of the action a contractor has taken or intends to take;
2. The specific reason for the action, including the specific facts, personal to the member, that support the action;
3. The specific law, rule, or other written policy, standards, or criteria that supports the action, or the specific change in federal or state law that authorizes the action;
4. An explanation of:
  - a. A member's right to request an evidentiary hearing; and
  - b. The circumstances under which the Administration or a contractor shall grant a hearing for an action based on a change in the law; and
5. An explanation of the circumstance under which a contractor shall continue a covered service if a member requests a hearing regarding a service that is:
  - a. Reduced;
  - b. Suspended; or
  - c. Terminated.

**R9-31-1305. Exceptions from an Advance Notice Repealed**

A contractor may mail a notice of a reduction, suspension, or termination of a service no later than the date of the contractor's action if the contractor:

1. Has factual information that confirms the death of a member;
2. Receives a written statement signed by the member that:
  - a. States services are no longer wanted; or
  - b. Provides information that requires a reduction or termination of a service and indicates that a member understands that a reduction or termination of a service shall be the result of that information;
3. Learns that a member has been admitted to an institution that makes a member ineligible for services;
4. Does not know a member's whereabouts, and mail directed to the member is returned by the post office and no forwarding address is provided;
5. Has established a fact that a member has been accepted for Title XIX or Title XXI services outside the state of Arizona; or
6. Knows that a member's primary care provider has prescribed a change in the level of medical care.

**R9-31-1306. Notice in a Case of Probable Fraud Repealed**

A contractor may shorten the period of advance notice to 5 days before the date of action if:

1. The circumstances indicate that action should be taken because of probable fraud by a member; and
2. The facts have been verified through secondary resources, if possible.

Notices of Final Rulemaking

**R9-31-1307. ~~Expedited Hearing Process Repealed~~**

- A.** Request for expedited hearing:
1. If a contractor denies, reduces, suspends, or terminates a service that requires authorization, a member is entitled to an expedited hearing if a member files a request for hearing under the time frames in subsection (B).
  2. A member shall file a request for expedited hearing or a request for expedited hearing and continued services in the same manner as provided in R9-31-803.
- B.** Time frames. A member shall file a request for hearing with the Administration or the contractor:
1. No later than 10 business days after the date of personal delivery of the notice to the member; or
  2. No later than 15 business days after the postmark date, if mailed, of the notice.
- C.** Expedited hearing. A hearing under this Section shall be held no sooner than 20 days, and not later than 40 days, after the Administration's receipt of the request for hearing. The hearing may be held sooner than 20 days after the Administration's receipt of the request for hearing upon the agreement of all of the parties or upon written motion of 1 of the parties establishing:
1. Extraordinary circumstances; or
  2. The possibility of irreparable harm if the hearing is not held sooner.
- D.** Notice of hearing date. The Administration shall provide notice of the hearing date to the member or the authorized representative and to all other parties to the hearing.
- E.** Continued services. If a request for expedited hearing and a request for continued services is filed in a timely manner under this Section, a contractor shall not terminate, reduce, or suspend the service during the expedited hearing process.
- F.** Previously authorized service:
1. In addition to services which are continued under subsection (E), the contractor shall continue services pending a hearing decision if:
    - a. The contractor denies an authorization for a previously authorized service for the member because the contractor considers the service new and independent of any previous authorization;
    - b. The member's primary care physician asserts that the requested service is a necessary continuation of the previous authorization; and
    - c. The member challenges the denial on this basis and timely requests continued services.
  2. Services shall not be continued if:
    - a. The parties reach agreement; or
    - b. The contractor believes the primary care provider's request endangers the member.
- G.** Financial liability of a member. A member whose service is continued pending a hearing decision under A.R.S. § 41-1092 is financially liable for the service received if a decision to reduce, suspend, or terminate is upheld under A.R.S. § 41-1092.
- H.** General provisions. If an expedited hearing is requested, a hearing shall be conducted under A.R.S. § 41-1092.
- I.** Alternative hearing process. A request for expedited hearing shall be considered a grievance under 9 A.A.C. 31, Article 8, and the Administration shall forward the request to the contractor within 10 business days after the day the Administration receives the request if:
1. The Administration determines that a request for hearing filed under this Section is not timely as determined by the Office of Legal Assistance's date stamp on the document; or
  2. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.

**R9-31-1308. ~~Maintenance of Records Repealed~~**

The party providing notice of denial, reduction, suspension, or termination of a service shall maintain records of the written notification and the date of the notice given to the member.

**R9-31-1309. ~~Member Handbook Repealed~~**

A contractor shall furnish each member with a handbook, as specified in contract, that explains a member's right to file a grievance or request a hearing concerning an action that affects a member's receipt of medical services.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
GRIEVANCE SYSTEM

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
Article 1	New Article
R9-34-101	New Section
R9-34-102	New Section
R9-34-103	New Section
R9-34-104	New Section
R9-34-105	New Section
R9-34-106	New Section
R9-34-107	New Section
R9-34-108	New Section
R9-34-109	New Section
R9-34-110	New Section
R9-34-111	New Section
R9-34-112	New Section
R9-34-113	New Section
R9-34-114	New Section
Article 2	New Article
R9-34-201	New Section
R9-34-202	New Section
R9-34-203	New Section
R9-34-204	New Section
R9-34-205	New Section
R9-34-206	New Section
R9-34-207	New Section
R9-34-208	New Section
R9-34-209	New Section
R9-34-210	New Section
R9-34-211	New Section
R9-34-212	New Section
R9-34-213	New Section
R9-34-214	New Section
R9-34-215	New Section
R9-34-216	New Section
R9-34-217	New Section
R9-34-218	New Section
R9-34-219	New Section
R9-34-220	New Section
R9-34-221	New Section
R9-34-222	New Section
R9-34-223	New Section
R9-34-224	New Section
R9-34-225	New Section
Article 3	New Article
R9-34-301	New Section
R9-34-302	New Section
R9-34-303	New Section
R9-34-304	New Section
R9-34-305	New Section
R9-34-306	New Section
R9-34-307	New Section
R9-34-308	New Section
R9-34-309	New Section
R9-34-310	New Section
R9-34-311	New Section
R9-34-312	New Section

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R9-34-313	New Section
R9-34-314	New Section
R9-34-315	New Section
R9-34-316	New Section
R9-34-317	New Section
R9-34-318	New Section
R9-34-319	New Section
R9-34-320	New Section
R9-34-321	New Section
R9-34-322	New Section
Article 4	New Article
R9-34-401	New Section
R9-34-402	New Section
R9-34-403	New Section
R9-34-404	New Section
R9-34-405	New Section
R9-34-406	New Section
R9-34-407	New Section
R9-34-408	New Section
R9-34-409	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. §§ 36-2903.01(B)(4), 36-2912(H)(5), 36-2932(H)(1), and 36-2986(L)(2)

Implementing statutes: A.R.S. §§ 36-2903.01(B)(4), 36-2912(H)(5), 36-2932(H)(1), and 36-2986(L)(2)

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

April 3, 2004

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 4459, October 17, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 4898, November 14, 2003

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

Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115

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

Federal regulations implementing the Balanced Budget Act changed the states' Medicaid grievance and appeal systems for managed care. AHCCCS is repealing the rules in Chapter 22, 27, 28, and 31. They are being moved to Chapter 34 and amended to conform to the new federal requirements and to make the rules more user friendly.

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

The agency did not review any studies relevant to these rules.

**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 information contained in the repealed rules will be placed into a new Chapter, 9 A.A.C. 34, and amended. Chapter 34, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to AHCCCS, the Office of Administrative Hearing, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.

**Notices of Final Rulemaking**

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

AHCCCS announced the following changes at the public hearing.

R9-34-208(B)	B. An authorized representative, including a provider, acting on behalf of the enrollee, and with the enrollee's written consent, <del>shall</del> <b>may</b> file an appeal or request a State Fair Hearing on behalf of an enrollee. <b>Change: Deleted the word "shall" and inserted the word "may"</b>
R9-34-214(A)(1)	1. The contractor receives a request for an <del>expedited</del> appeal from the enrollee and the contractor determines that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function; <b>Change: Deleted the word "expedited"</b>
R9-34-214(A)(3)	3. The contractor receives a request for an expedited appeal directly from the provider, <b>with the enrollee's written consent</b> , and the provider indicates that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function. <b>Change: Inserted "with the enrollee's written consent"</b>
R9-34-311(D)	1. The <del>appeal</del> <b>prior authorization request</b> was reviewed by two independent medical professionals prior to mailing the Notice of Action; or <b>Change: Deleted the word "appeal" and inserted "prior authorization request"</b>
R9-34-314(B)	B. If a FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321. <b>Change: Section number was changed from R9-34-221 to R9-34-321</b>
R9-34-316(A)	A. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 when AHCCCS receives an <del>expedited</del> appeal request from the FFS member no later than 30 days after AHCCCS mails the Notice of Action and: <b>Change: Deleted the word "expedited"</b>
R9-34-408(5)	<del>The sole issue presented is a federal or state law requiring an automatic change adversely affecting a provider.</del> <b>Change: The entire sentence was deleted because it does not apply to claim disputes.</b>
	Other technical and grammatical changes were made at the suggestion of Governor's Regulatory Review Council staff.

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

The agency did not receive any comments.

**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. Were these rules previously adopted as emergency rules?**

No

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

Notices of Final Rulemaking

TITLE 9. HEALTH SERVICES

**CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
GRIEVANCE SYSTEM**

**ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING**

<u>Section</u>	
<u>R9-34-101.</u>	<u>Purpose</u>
<u>R9-34-102.</u>	<u>Definitions</u>
<u>R9-34-103.</u>	<u>Computation of Time</u>
<u>R9-34-104.</u>	<u>Petitioner's Rights</u>
<u>R9-34-105.</u>	<u>Who May File</u>
<u>R9-34-106.</u>	<u>Requesting a State Fair Hearing</u>
<u>R9-34-107.</u>	<u>Time-frame for Requesting a State Fair Hearing</u>
<u>R9-34-108.</u>	<u>Format and Contents of the Request for a State Fair Hearing</u>
<u>R9-34-109.</u>	<u>Notice of Hearing</u>
<u>R9-34-110.</u>	<u>Denial of a Request for a State Fair Hearing</u>
<u>R9-34-111.</u>	<u>AHCCCS Time-frame for Resolution of a State Fair Hearing</u>
<u>R9-34-112.</u>	<u>Withdrawal of a Request for a State Fair Hearing</u>
<u>R9-34-113.</u>	<u>Motion for Rehearing or Review</u>
<u>R9-34-114.</u>	<u>AHCCCS Coverage During the State Fair Hearing Process</u>

**ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON**

<u>Section</u>	
<u>R9-34-201.</u>	<u>Purpose</u>
<u>R9-34-202.</u>	<u>Definitions</u>
<u>R9-34-203.</u>	<u>Computation of Time</u>
<u>R9-34-204.</u>	<u>Language and Format of the Notice of Action</u>
<u>R9-34-205.</u>	<u>Content of the Notice of Action</u>
<u>R9-34-206.</u>	<u>Contractor Notice of Action Time-frame for Service Authorization Requests</u>
<u>R9-34-207.</u>	<u>Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction</u>
<u>R9-34-208.</u>	<u>Who May File</u>
<u>R9-34-209.</u>	<u>Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor</u>
<u>R9-34-210.</u>	<u>Contractor General Requirements for Grievance or Appeal Process</u>
<u>R9-34-211.</u>	<u>Contractor Special Requirements for the Appeal Process</u>
<u>R9-34-212.</u>	<u>Contractor Time-frame for Standard Disposition of a Grievance</u>
<u>R9-34-213.</u>	<u>Contractor Time-frame for Standard Resolution of an Appeal</u>
<u>R9-34-214.</u>	<u>Contractor Process for an Expedited Resolution of an Appeal</u>
<u>R9-34-215.</u>	<u>Contractor Time-frame for an Expedited Appeal Resolution</u>
<u>R9-34-216.</u>	<u>Content of Contractor Notice of Appeal Resolution</u>
<u>R9-34-217.</u>	<u>Enrollee Request for a State Fair Hearing</u>
<u>R9-34-218.</u>	<u>AHCCCS Time-frame for Resolution of a State Fair Hearing</u>
<u>R9-34-219.</u>	<u>Enrollee's Request for an Expedited State Fair Hearing</u>
<u>R9-34-220.</u>	<u>AHCCCS Time-frame for Resolution of Expedited State Fair Hearing</u>
<u>R9-34-221.</u>	<u>Withdrawal of a Request for a State Fair Hearing</u>
<u>R9-34-222.</u>	<u>Denial of a Request for a State Fair Hearing</u>
<u>R9-34-223.</u>	<u>Motion for Rehearing or Review</u>
<u>R9-34-224.</u>	<u>Continuation of Services While the Contractor Appeal and the State Fair Hearing are Pending</u>
<u>R9-34-225.</u>	<u>Reversed Appeal Resolutions</u>

**ARTICLE 3. APPEAL AND HEARING FOR A FFS MEMBER**

<u>Section</u>	
<u>R9-34-301.</u>	<u>Purpose</u>
<u>R9-34-302.</u>	<u>Definitions</u>
<u>R9-34-303.</u>	<u>Computation of Time</u>
<u>R9-34-304.</u>	<u>Language and Format of the Notice of Action</u>
<u>R9-34-305.</u>	<u>Content of the Notice of Action</u>
<u>R9-34-306.</u>	<u>Time-frame for Notice of Action for Service Authorization Requests</u>
<u>R9-34-307.</u>	<u>Time-frame for Notice of Action for Service Termination, Suspension, or Reduction</u>

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<u>R9-34-308.</u>	<u>Who May File</u>
<u>R9-34-309.</u>	<u>Time-frame for Filing an Appeal</u>
<u>R9-34-310.</u>	<u>General Requirements for the Appeal Process</u>
<u>R9-34-311.</u>	<u>Special Requirements for the Appeal Process</u>
<u>R9-34-312.</u>	<u>Time-frame for Standard Resolution of an Appeal</u>
<u>R9-34-313.</u>	<u>Content of the Notice of Appeal Resolution</u>
<u>R9-34-314.</u>	<u>Request for a State Fair Hearing</u>
<u>R9-34-315.</u>	<u>Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal</u>
<u>R9-34-316.</u>	<u>Request for Expedited Resolution of an Appeal</u>
<u>R9-34-317.</u>	<u>Time-frame for Resolution of Expedited State Fair Hearing</u>
<u>R9-34-318.</u>	<u>Withdrawal of a Request for a State Fair Hearing</u>
<u>R9-34-319.</u>	<u>Denial of a Request for a State Fair Hearing</u>
<u>R9-34-320.</u>	<u>Motion for Rehearing or Review</u>
<u>R9-34-321.</u>	<u>Continuation of Services While the Appeal and the State Fair Hearing are Pending</u>
<u>R9-34-322.</u>	<u>Reversed Appeal Resolutions</u>

**ARTICLE 4. CLAIM DISPUTE**

Section

<u>R9-34-401.</u>	<u>Purpose</u>
<u>R9-34-402.</u>	<u>Definitions</u>
<u>R9-34-403.</u>	<u>Computation of Time</u>
<u>R9-34-404.</u>	<u>Content of Claim Dispute</u>
<u>R9-34-405.</u>	<u>Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor</u>
<u>R9-34-406.</u>	<u>Filing a Claim Dispute from a Contractor for Reinsurance</u>
<u>R9-34-407.</u>	<u>Filing a Claim Dispute for a Claim Involving a FFS Member</u>
<u>R9-34-408.</u>	<u>Denial of a Request for a State Fair Hearing</u>
<u>R9-34-409.</u>	<u>Motion for Rehearing or Review</u>

**ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING**

**R9-34-101. Purpose**

This Article establishes the requirements and process for a petitioner to request a State Fair Hearing regarding an adverse action affecting eligibility. Except for the adverse action in R9-34-102(A)(5), this Article does not apply to a person determined eligible by the Arizona Department of Economic Security under 9 A.A.C. 22, Article 14.

**R9-34-102. Definitions**

- A.** “Adverse action” by AHCCCS means:
1. Denial of eligibility.
  2. Discontinuance of eligibility.
  3. The imposition of or increase in Arizona Long Term Care System (ALTCS) share of cost determined under A.A.C. R9-28-408 or R9-28-410.
  4. An eligibility determination that the petitioner claims is beyond the established time-frame, or
  5. The imposition of or increase in a premium or copayment.
- B.** “AHCCCS” means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- C.** “Day” means calendar day unless otherwise specified.
- D.** “Director” means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- E.** “Director’s Decision” means the final administrative decision under A.R.S. § 41-1092(5).
- F.** “Filed” means the date that AHCCCS receives a request for a State Fair Hearing as established by a date stamp on the request or other record of receipt.
- G.** “Petitioner” means applicant, member, or other representative who is described and discussed in A.A.C. R9-22-1501, R9-22-1704, R9-22-1903, R9-22-2004, R9-27-302, R9-28-401, R9-28-1303, R9-29-203, R9-31-302, R9-31-1702, or for an adverse action under subsection (A)(5), an applicant, member, or other representative under 9 A.A.C. 22, Article 14.
- H.** “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

**R9-34-103. Computation of Time**

- A.** Computation of time begins the day after the date on the Notice of Adverse Action and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B.** The 30-day time-frame for filing a request for a State Fair Hearing begins with the date the petitioner receives the Notice of Adverse Action.

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**R9-34-104. Petitioner's Rights**

AHCCCS shall allow a petitioner the right to:

1. A State Fair Hearing; and
2. Copies, at the petitioner's expense, of any relevant document not protected from disclosure by law.

**R9-34-105. Who May File**

A petitioner who requests a State Fair Hearing shall make the request according to this Article.

**R9-34-106. Requesting a State Fair Hearing**

A petitioner may request a State Fair Hearing under this Article only for an adverse action.

**R9-34-107. Time-frame for Requesting a State Fair Hearing**

A petitioner shall request a State Fair Hearing in writing with AHCCCS within 30 days after the petitioner receives the Notice of Adverse Action.

**R9-34-108. Format and Contents of the Request for a State Fair Hearing**

A petitioner shall submit a written request for a State Fair Hearing to AHCCCS. The request shall contain the case name, the adverse action taken by AHCCCS, and the reason for the State Fair Hearing.

**R9-34-109. Notice of Hearing**

AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a request for a State Fair Hearing that is timely and contains the information listed in R9-34-108.

**R9-34-110. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for a State Fair Hearing upon written determination by AHCCCS that:

1. The request for a State Fair Hearing is untimely;
2. The request for a State Fair Hearing is not for an adverse action permitted under this Article;
3. The request for a State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.

**R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing**

AHCCCS shall mail a Director's Decision to the petitioner no later than 30 days after the date of the Administrative Law Judge's recommended decision and within 90 days after the date that the petitioner filed the request for a State Fair Hearing not including days for continuances granted at the petitioner's request.

**R9-34-112. Withdrawal of a Request for a State Fair Hearing**

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the petitioner before AHCCCS mails a Notice of Hearing under R9-34-109.
- B. If AHCCCS mailed a Notice of Hearing under R9-34-109, the petitioner shall send a written request for withdrawal to the Office of Administrative Hearings (OAH).

**R9-34-113. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a petitioner's rights:

1. Irregularity in the proceedings of a State Fair Hearing that deprived a petitioner of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

**R9-34-114. AHCCCS Coverage During the State Fair Hearing Process**

- A. If a petitioner requests a State Fair Hearing because of an increase in the share-of-cost, premium, or copayment and the request is filed before the effective date of the increase, AHCCCS shall not enforce the increase until a Director's Decision is rendered that supports the increase.
- B. If a petitioner files a request for a State Fair Hearing for a discontinuance action before the effective date of the discontinuance, the petitioner shall continue to receive AHCCCS coverage until a Director's Decision is rendered. A petitioner may waive coverage while the Director's Decision is pending.
- C. A petitioner, eligible under 9 A.A.C. 22, Article 31, who requests AHCCCS coverage during the State Fair Hearing process, shall comply with the premium payment requirements under A.A.C. R9-31-1419.

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- D. A petitioner whose benefits are continued shall be financially liable for all fee-for-service and capitation payments made by AHCCCS during a period of ineligibility, if a discontinuance decision is upheld under A.R.S. § 41-1092.08.
- E. If a petitioner requests a hearing regarding the termination of family planning services under A.A.C. R9-22-1424 or the guaranteed enrollment period under 9 A.A.C. 22, Article 17, the petitioner shall not continue to be AHCCCS eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the Director's Decision.
- F. If a denial of eligibility is overturned, the effective date of AHCCCS eligibility shall be set forth in the Director's Decision.

**ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON**

**R9-34-201. Purpose**

This Article establishes the grievance, appeal, and State Fair Hearing requirements for a person enrolled with an AHCCCS contractor. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.

**R9-34-202. Definitions**

The following definitions apply for purposes of this Article:

1. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
2. "Action" by a contractor means:
  - a. The denial or limited authorization of a requested service, including the type or level of service;
  - b. The reduction, suspension, or termination of a previously authorized service;
  - c. The denial, in whole or in part, of payment for a service;
  - d. The failure to provide a service in a timely manner as set forth in contract;
  - e. The failure of a contractor to act within the time-frames specified in this Article; or
  - f. For an enrollee residing in a rural area with only one contractor, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the contractor's network.
3. "Appeal" means a request for review of an action.
4. "Contractor" means contractor or program contractor as defined in A.R.S. §§ 36-2901, 36-2931, 36-2971 and 36-2981; the Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services.
5. "Day" means calendar day unless otherwise specified.
6. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
7. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
8. "Enrollee" means a person eligible for AHCCCS under A.R.S. Title 36, Chapter 29 and who is enrolled with an AHCCCS contractor.
9. "Filed" means the date that the contractor or AHCCCS, whichever is applicable, receives the request as established by a date stamp on the request or other record of receipt.
10. "Grievance" means an expression of dissatisfaction about any matter other than an action. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the enrollee's rights.
11. "Institution for Mental Disease" means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
12. "Rural" has the same meaning as in A.R.S. § 36-2171.
13. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
14. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
  - a. A legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
  - b. A legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

**R9-34-203. Computation of Time**

- A. Computation of time in calendar days, begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. Computation of time in working days, begins the day after the act, event or decision and includes all working days.

**R9-34-204. Language and Format of the Notice of Action**

A contractor shall ensure that the Notice of Action is in writing and meets the following language and format requirements:

1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of enrollees or potential enrollees in the contractor's geographic service area as established by contract.

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2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.
3. The format of the Notice of Action is easily understood and available in alternative formats, such as braille, large font, or enhanced audio, and in an appropriate manner that takes into consideration the special needs of an enrollee.

**R9-34-205. Content of the Notice of Action**

A contractor shall ensure that the Notice of Action explains the following:

1. The action the contractor has taken or intends to take;
2. The reasons for the action;
3. The enrollee's right to file an appeal with the contractor;
4. The procedures for exercising the rights specified in this Article;
5. The circumstances under which an expedited resolution is available and how to request it; and
6. The circumstances under which an enrollee has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the enrollee is liable for the costs of services.

**R9-34-206. Contractor Notice of Action Time-frame for Service Authorization Requests**

- A.** For an authorization decision, not covered under subsection (B), for a service requested on behalf of an enrollee, the contractor shall mail a Notice of Action within 14 calendar days following the receipt of the enrollee's request.
- B.** For an authorization request in which the provider indicates or the contractor determines that following the time-frame in subsection (A) could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the contractor shall make an expedited authorization decision and mail the Notice of Action as expeditiously as the enrollee's health condition requires, but not later than three working days after receipt of the request for service.
- C.** If the enrollee requests an extension of the time-frame in subsection (A) or (B), the contractor shall extend the time-frame up to an additional 14 days as requested by the enrollee.
- D.** If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  1. Give the enrollee written notice of the reason for the decision to extend the time-frame and inform the enrollee of the right to file a grievance if the enrollee disagrees with the decision, and
  2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- E.** For service authorization decisions not reached within the maximum time-frame in this Section, the authorization shall be considered denied on the date that the time-frame expires.

**R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction**

- A.** For termination, suspension, or reduction of previously authorized AHCCCS covered service, a contractor shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).
- B.** The contractor may mail the Notice of Action no later than the date of action if:
  1. The contractor has factual information confirming the death of an enrollee;
  2. The contractor receives a clear written statement signed by the enrollee that the enrollee no longer wishes services or the enrollee gives information to the contractor that requires termination or reduction of services and indicates that the enrollee understands that this shall be the result of supplying that information;
  3. The enrollee is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
  4. The enrollee is an inmate of a public institution that does not receive federal financial participation;
  5. The enrollee's whereabouts are unknown and the post office returns mail, directed to the enrollee, to the contractor indicating no forwarding address; or
  6. The contractor establishes the fact that the enrollee has been accepted for Medicaid by another state.
- C.** The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the enrollee.
- D.** If the contractor denies payment to a provider, the contractor shall send the Notice of Action to the enrollee at the time of the action affecting the claim.

**R9-34-208. Who May File**

- A.** An enrollee shall file a grievance, an appeal, or request a State Fair Hearing according to this Article.
- B.** An authorized representative, including a provider, acting on behalf of the enrollee, with the enrollee's written consent, may file an appeal or request a State Fair Hearing on behalf of an enrollee. A provider is permitted to file a grievance with a contractor at the contractor's discretion.

**R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor**

- A.** An enrollee shall file an appeal either orally or in writing with the contractor within 60 days after the date of the Notice of Action.

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- B. The enrollee shall file a grievance either orally or in writing with the contractor.
- C. The enrollee shall file a grievance directly with the contractor. AHCCCS shall refer to the contractor any grievance filed with AHCCCS. An enrollee is not entitled to a State Fair Hearing on a grievance.

**R9-34-210. Contractor General Requirements for Grievance or Appeal Process**

- A. A contractor shall provide reasonable assistance to enrollees in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf, and text telephone) and interpreter capability.
- B. The contractor shall acknowledge receipt of each grievance orally or in writing. The contractor shall acknowledge receipt of each appeal in writing.
- C. The contractor shall ensure that the individual who makes a decision on a grievance or an appeal was not involved in any previous level of review or decision-making.
- D. The contractor shall ensure that a health care professional who makes decisions on any of the following appeals or grievances has the appropriate clinical expertise in treating the enrollee's condition or disease:
  - 1. An appeal of a denial that is based on lack of medical necessity.
  - 2. A grievance regarding denial of expedited resolution of an appeal, or
  - 3. A grievance or appeal that involves clinical issues.

**R9-34-211. Contractor Special Requirements for the Appeal Process**

- A. A contractor shall treat an oral inquiry seeking to appeal an action as an appeal.
- B. A resolution of an appeal by the contractor before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).
- C. The contractor shall provide a reasonable opportunity for an enrollee to present evidence, and allegations of fact or law, in person and in writing. The contractor shall inform the enrollee of the limited time available for this in the case of an expedited resolution.
- D. The contractor shall provide the enrollee and representative the opportunity, before and during the appeal process, to examine the enrollee's case file, including medical records, documents, and records considered during the appeal process, not protected from disclosure by law.
- E. The contractor shall include, as a party to the appeal, the enrollee or the legal representative of a deceased enrollee's estate.

**R9-34-212. Contractor Time-frame for Standard Disposition of a Grievance**

For disposition of a grievance, a contractor shall complete disposition and provide oral or written notice to the enrollee of the contractor's decision within 90 days after the day the contractor receives the grievance.

**R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal**

- A. For standard resolution of an appeal, a contractor shall resolve the appeal and mail the written Notice of Appeal Resolution to the enrollee within 30 days after the day the contractor receives the appeal.
- B. If the enrollee requests an extension of the 30-day time-frame in subsection (A), the contractor shall extend the time-frame up to an additional 14 days.
- C. If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  - 1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
  - 2. Issue and carry out the resolution as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D. If a Notice of Appeal Resolution is not sent within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

**R9-34-214. Contractor Process for an Expedited Resolution of an Appeal**

- A. A contractor shall establish and maintain a review process for an expedited appeal. The contractor shall conduct an expedited appeal if:
  - 1. The contractor receives a request for an appeal from an enrollee and the contractor determines that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function;
  - 2. The contractor receives a request for an expedited appeal from an enrollee supported with documentation from the provider that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function; or
  - 3. The contractor receives a request for an expedited appeal directly from a provider, with the enrollee's written consent, and the provider indicates that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function.

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- B. The contractor shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports an enrollee's appeal.
- C. If the contractor denies a request for expedited resolution of an appeal from an enrollee, the contractor shall:
  1. Resolve the appeal within the time-frame in R9-34-213; and
  2. Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

**R9-34-215. Contractor Time-frame for an Expedited Appeal Resolution**

- A. For expedited resolution of an appeal, a contractor shall resolve the appeal and mail a written Notice of Appeal Resolution to the enrollee within three working days after the day the contractor receives the appeal. The contractor shall make reasonable efforts to provide prompt oral notice.
- B. If the enrollee requests an extension of the three working day time-frame in subsection (A), the contractor shall extend the time-frame up to an additional 14 days.
- C. If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
  2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D. For resolution decisions not reached within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

**R9-34-216. Content of Contractor Notice of Appeal Resolution**

- A. A contractor shall ensure that the written Notice of Appeal Resolution includes the results of the resolution process and the date it was completed.
- B. For an appeal not resolved wholly in favor of the enrollee, the Notice of Appeal Resolution shall contain:
  1. The right to request a State Fair Hearing, and how to do so;
  2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request;
  3. The factual and legal basis for the decision; and
  4. That the enrollee shall be liable for the cost of continued services if the Director's Decision upholds the contractor's decision.

**R9-34-217. Enrollee Request for a State Fair Hearing**

- A. An enrollee may request a State Fair Hearing on the contractor's resolution of an appeal. The request shall be in writing, submitted to and received by the contractor, no later than 30 days after the date the enrollee receives the Notice of Appeal Resolution.
- B. If an enrollee wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-224.
- C. AHCCCS shall mail a Notice of Fair Hearing under A.R.S. § 41-1092.05 if a timely request for a State Fair Hearing is received.

**R9-34-218. AHCCCS Time-frame for Resolution of a State Fair Hearing**

AHCCCS shall mail a Director's Decision to the enrollee no later than 30 days after the date of the Administrative Law Judge's recommended decision and within 90 days after the date that the enrollee filed the appeal with the contractor, not including the number of days the enrollee took to file for a State Fair Hearing, and days for continuances granted at the enrollee's request.

**R9-34-219. Enrollee's Request for an Expedited State Fair Hearing**

An enrollee may request an expedited State Fair Hearing on the contractor's resolution of an expedited appeal. The request shall be in writing, submitted to and received by the contractor no later than 30 days after the enrollee receives the contractor's Notice of Appeal Resolution.

**R9-34-220. AHCCCS Time-frame for Resolution of an Expedited State Fair Hearing**

Within three working days after the date AHCCCS receives the case file and information from the contractor concerning an expedited appeal resolution, AHCCCS shall mail to the enrollee the AHCCCS Director's Decision which results from the State Fair Hearing and the Administrative Law Judge's Recommended Decision. AHCCCS shall make reasonable efforts to provide oral notice of the Director's Decision.

**R9-34-221. Withdrawal of a Request for a State Fair Hearing**

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the enrollee before AHCCCS mails a Notice of a State Fair Hearing under A.R.S. § 41-1092, et seq.
- B. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., an enrollee shall send a written request for withdrawal to the OAH.

**R9-34-222. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for a State Fair Hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The request for hearing is moot, as determined by AHCCCS, based on the factual circumstances of each case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

**R9-34-223. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an enrollee of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of the enrollee at the State Fair Hearing.

**R9-34-224. Continuation of Services While the Contractor Appeal and the State Fair Hearing Are Pending**

**A.** For the purposes of this Section, timely filing means filing on or before the later of the following:

1. Within 10 days after the date that the contractor mails the Notice of Action, or
2. The effective date of the action as indicated in the Notice of Action.

**B.** The contractor shall continue the enrollee's services if:

1. The enrollee files the appeal timely;
2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
3. The services were ordered by an authorized provider;
4. The original period covered by the original authorization has not expired; and
5. The enrollee requests continuation of services.

**C.** If, at the enrollee's request, the contractor continues or reinstates the enrollee's services while the appeal is pending, the contractor shall continue services until one of following occurs:

1. The enrollee withdraws the appeal;
2. Ten days pass after the contractor mails the Notice of Appeal Resolution to the enrollee, unless the enrollee, within the 10-day time-frame, has requested in writing a State Fair Hearing with continuation of benefits until a Director's Decision is reached;
3. AHCCCS mails a Director's Decision adverse to the enrollee; or
4. The time-period or service limits of a previously authorized service have been met.

**D.** If the Director's Decision upholds the contractor's action, the contractor may recover the cost of the services furnished to the enrollee while the appeal is pending if the services were furnished solely because of the requirements of this Section.

**R9-34-225. Reversed Appeal Resolutions**

**A.** If the contractor or the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the contractor shall authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

**B.** If the contractor or the Director's Decision reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the contractor shall pay the provider for those services.

**ARTICLE 3. APPEAL AND HEARING FOR AN FFS MEMBER**

**R9-34-301. Purpose**

This Article establishes the appeal and State Fair Hearing requirements for an AHCCCS fee-for-service (FFS) member.

**R9-34-302. Definitions**

**A.** "Action" by AHCCCS or a tribal contractor means:

1. The denial or limited authorization of a requested service, including the type or level of service;
2. The reduction, suspension, or termination of a previously authorized service;
3. The failure to provide services in a timely manner as set forth in contract; or
4. The failure of AHCCCS to act within the time-frames specified in this Article.

**B.** "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.

**C.** "Appeal" means a request for review of an action.

**D.** "Day" means calendar day unless otherwise specified.

**E.** "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.

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- F.** “Director’s Decision” means the final administrative decision under A.R.S. § 41-1092(5).
- G.** “FFS member” means a FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on a FFS basis.
- H.** “Filed” means the date that AHCCCS receives a request as established by a date stamp on the request or other record of receipt.
- I.** “Institution for Mental Disease” means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
- J.** “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
- K.** “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
  - 1. A legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
  - 2. A legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

**R9-34-303. Computation of Time**

- A.** Computation of time in calendar days begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B.** Computation of time for working day begins the day after the act, event, or decision and includes all working days.

**R9-34-304. Language and Format of the Notice of Action**

The Notice of Action shall be in writing and meet the following language and format requirements:

- 1. The Notice of Action is available in each non-English language spoken by a significant number or percentage of FFS members as established by contract.
- 2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.

**R9-34-305. Content of the Notice of Action**

The Notice of Action explains the following:

- 1. The action AHCCCS has taken or intends to take;
- 2. The reasons for the action;
- 3. The factual and legal basis for the decision;
- 4. The FFS member’s right to file an appeal with AHCCCS;
- 5. The procedures for exercising the rights specified in this Section;
- 6. The circumstances under which an expedited resolution is available and how to request it; and
- 7. The circumstances under which a FFS member has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the FFS member shall be liable for the costs of these services.

**R9-34-306. Time-frame for Notice of Action for Service Authorization Requests**

- A.** For an authorization decision, not covered in subsection (B), for a service requested on behalf of the FFS member, AHCCCS shall mail a Notice of Action within 14 calendar days following receipt of the FFS member’s request.
- B.** For authorization requests in which the provider indicates or AHCCCS determines that following the time-frame in subsection (A) could seriously jeopardize the FFS member’s life or health, or ability to attain, maintain, or regain maximum function, AHCCCS shall make an expedited authorization decision and provide notice as expeditiously as the FFS member’s health condition requires, but not later than three working days after receipt of the request for service.
- C.** If the FFS member requests an extension of the time-frame in subsection (A) or (B), AHCCCS shall extend the time-frame up to an additional 14 days as requested by the FFS member.
- D.** If AHCCCS needs additional information and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
  - 1. Give the FFS member written notice of the reason for the decision to extend the time-frame; and
  - 2. Mail and carry out the determination as expeditiously as the FFS member’s health condition requires and no later than the date the extension expires.
- E.** For service authorization decisions not reached within the time-frames in this Section, the authorization shall be considered denied on the date that the time-frame expires.

**R9-34-307. Time-frame for Notice of Action for Service Termination, Suspension, or Reduction**

- A.** For termination, suspension, or reduction of previously authorized AHCCCS covered service, AHCCCS shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).
- B.** AHCCCS may mail the Notice of Action no later than the date of action if:
  - 1. AHCCCS has factual information confirming the death of a FFS member;

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2. AHCCCS receives a clear written statement signed by the FFS member that the FFS member no longer wishes services or the FFS member gives information that requires termination or reduction of services and indicates that the FFS member understands that this shall be the result of supplying that information;
  3. The FFS member is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
  4. The FFS member is an inmate of a public institution that does not receive federal financial participation;
  5. The FFS member's whereabouts are unknown and the post office returns mail, directed to the FFS member, to the contractor indicating no forwarding address; or
  6. AHCCCS establishes the fact that the FFS member has been accepted for Medicaid by another state.
- C. AHCCCS may shorten the period of advance notice to five days before the date of action if AHCCCS has verified facts indicating probable fraud by the FFS member.

**R9-34-308. Who May File**

- A. A FFS member shall file an appeal or request a State Fair Hearing according to this Article.
- B. An authorized representative, including a provider acting on behalf of the FFS member with the FFS member's written consent, shall file an appeal or request a State Fair Hearing on behalf of a FFS member.

**R9-34-309. Time-frame for Filing an Appeal**

A FFS member shall file an appeal either orally or in writing with AHCCCS within 60 days after the date the FFS member receives the Notice of Action.

**R9-34-310. General Requirements for the Appeal Process**

- A. AHCCCS shall provide reasonable assistance to a FFS member in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf and text telephone) and interpreter capability.
- B. AHCCCS shall acknowledge receipt of each appeal in writing.
- C. AHCCCS shall ensure that the individual who makes a decision on an appeal was not involved in any previous level of review or decision-making.

**R9-34-311. Special Requirements for the Appeal Process**

- A. AHCCCS shall provide that an oral inquiry seeking to appeal an action is treated as an appeal.
- B. A resolution of an appeal by AHCCCS before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).
- C. AHCCCS shall provide a reasonable opportunity for the FFS member to present evidence and allegations of fact or law prior to issuance of an appeal resolution.
- D. AHCCCS shall provide the enrollee and representative the opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, documents not protected from disclosure by law, and records considered during the appeal process.
- E. AHCCCS shall schedule a hearing and mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely appeal and:
1. The prior authorization request, as defined in 9 A.A.C. 22, Article 1, was reviewed by two independent medical professionals prior to mailing the Notice of Action; or
  2. The FFS member requests a State Fair Hearing for expedited resolution that meets the criteria in R9-34-316.

**R9-34-312. Time-frame for Standard Resolution of an Appeal**

- A. For standard resolution of an appeal, AHCCCS shall resolve the appeal and mail written Notice of Appeal Resolution to the FFS member within 30 days after the day AHCCCS receives the appeal.
- B. If the FFS member requests an extension of the 30 day time-frame in subsection (A), AHCCCS shall extend the time-frame up to an additional 14 days if requested by the FFS member.
- C. If additional information is needed by AHCCCS and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in subsection (A) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
1. Give the FFS member written notice of the reason for the decision to extend the time-frame, and
  2. Mail and carry out the resolution as expeditiously as the FFS member's health condition requires and no later than the date the extension expires.
- D. For resolution decisions not reached within the time-frames in this Section, the appeal shall be considered denied on the date that the time-frames expires.

**R9-34-313. Content of the Notice of Appeal Resolution**

- A. The written Notice of Appeal Resolution shall include the results of the resolution process and the date it was completed.
- B. For appeals not resolved wholly in favor of the FFS member, the Notice of Appeal Resolution shall contain:
1. The right to request a State Fair Hearing, and how to do so.
  2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request.

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3. The factual and legal basis for the decision; and
4. That the FFS member shall be liable for the cost of continued services if the Director's Decision upholds AHCCCS' decision.

**R9-34-314. Request for a State Fair Hearing**

- A. A FFS member may request a State Fair Hearing on AHCCCS' standard resolution of an appeal. The request shall be in writing, submitted to and received by AHCCCS, no later than 30 days after the FFS member receives the AHCCCS Notice of Appeal Resolution.
- B. If a FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.
- C. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing under the requirements of this Article.

**R9-34-315. Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal**

AHCCCS shall mail a Notice of Final Decision to the FFS member no later than 30 days after the date the Administrative Law Judge sends the recommended decision to AHCCCS, and within 90 days after the date that the FFS member filed the appeal with AHCCCS, not including the days for continuances granted at the enrollee's request.

**R9-34-316. Request for Expedited Resolution of an Appeal**

- A. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 when AHCCCS receives an appeal request from a FFS member no later than 30 days after the FFS member receives the AHCCCS Notice of Action and:
  1. AHCCCS determines that taking the time for a standard resolution could seriously jeopardize the FFS member's life, health, or ability to attain, maintain, or regain maximum function;
  2. The expedited appeal request is supported with documentation by the provider supporting that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function; or
  3. AHCCCS receives an expedited appeal request directly from the provider who indicates that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function.
- B. AHCCCS shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports a FFS member's appeal.
- C. If AHCCCS denies a request for expedited resolution of an appeal from an FFS member, AHCCCS shall:
  1. Resolve the appeal within the time-frame in R9-34-315, and
  2. Make reasonable efforts to give the FFS member prompt oral notice of the denial, and follow up within two calendar days with a written notice.
- D. If a FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.

**R9-34-317. Time-frame for Resolution of Expedited State Fair Hearing**

AHCCCS shall mail a written Hearing Decision to the FFS member within three working days after the date that the hearing has concluded.

**R9-34-318. Withdrawal of a Request for a State Fair Hearing**

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the FFS member before AHCCCS mails a notice of hearing under A.R.S. § 41-1092 et seq.
- B. If AHCCCS mailed a notice of hearing under A.R.S. § 41-1092 et seq., a FFS member shall send a written request for withdrawal to OAH.

**R9-34-319. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092 et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The request for State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

**R9-34-320. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an FFS member of a State Fair Hearing;
2. Misconduct of AHCCCS, OAH, or a party;

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3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

**R9-34-321. Continuation of Services While the Appeal and the State Fair Hearing are Pending**

- A.** For the purposes of this Section, timely filing means filing on or before the later of the following:
1. Within 10 days from the date that AHCCCS mails the Notice of Action, or
  2. The intended effective date of AHCCCS' proposed action.
- B.** AHCCCS shall continue the FFS member's services if:
1. The FFS member files the appeal timely;
  2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
  3. An authorized provider ordered the services;
  4. The original period covered by the original authorization has not expired; and
  5. The FFS member requests continuation of services.
- C.** If, at the FFS member's request, AHCCCS continues or reinstates the FFS member's services while the appeal is pending, AHCCCS shall continue the services until one of following occurs:
1. The FFS member withdraws the appeal;
  2. Ten days pass after AHCCCS mails the Notice of Appeal Resolution to the FFS member unless the FFS member within the 10-day time-frame has requested a State Fair Hearing in writing with continuation of benefits until a Director's Decision is reached;
  3. AHCCCS mails a hearing decision adverse to the FFS member; or
  4. The time-period or service limits of a previously authorized service have been met.
- D.** If the Director's Decision upholds AHCCCS' action, the FFS member shall be liable for the cost of the services furnished to the FFS member while the appeal is pending, to the extent that the services were furnished solely because of the requirements of this Section.

**R9-34-322. Reversed Appeal Resolutions**

- A.** If the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, AHCCCS shall authorize or provide the disputed services promptly, and as expeditiously as the FFS member's health condition requires.
- B.** If the Director's Decision reverses a decision to deny authorization of services, and the FFS member received the disputed services while the appeal was pending, AHCCCS shall pay the provider for those services.

**ARTICLE 4. CLAIM DISPUTE**

**R9-34-401. Purpose**

This Article establishes process and requirements for a provider or contractor to resolve a claim dispute or request a State Fair Hearing. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.

**R9-34-402. Definitions**

- A.** "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- B.** "Claim dispute" means a dispute involving a payment of a claim, denial of a claim, imposition of a sanction or reinsurance.
- C.** "Contractor" means contractor or program contractor as defined in A.R.S. Title 36, Chapter 29; the Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services.
- D.** "Day" means calendar day unless otherwise specified.
- E.** "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- F.** "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
- G.** "FFS member" means a FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on a FFS basis and not enrolled with an AHCCCS contractor.
- H.** "Filed" means the date that AHCCCS receives a request as established by a date stamp on the request or other record of receipt.
- I.** "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

**R9-34-403. Computation of Time**

Computation of time for calendar day begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.

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**R9-34-404. Content of Claim Dispute**

A claim dispute shall specify in detail the factual and legal basis for the claim dispute and the relief requested. AHCCCS shall deny a claim dispute if the factual or legal basis is not detailed.

**R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor**

- A. For a claim for services rendered to a member enrolled with a contractor, the provider shall file a written claim dispute with the contractor under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. The contractor shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with the contractor, unless the provider and contractor agree to a longer period.
- C. The contractor's written Notice of Decision shall include:
  - 1. The date of the decision.
  - 2. The factual and legal basis for the decision.
  - 3. The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  - 4. The manner in which a request for a State Fair Hearing is filed under A.R.S. § 41-1092, et seq.
- D. A provider may request a State Fair Hearing on the contractor's Notice of Decision if:
  - 1. The provider files a written request for a State Fair Hearing with the contractor no later than 30 days after the date the provider receives the contractor's written Notice of Decision, or
  - 2. The contractor does not render a written Notice of Decision within 30 days after the claim dispute is filed and the provider files a written request for a State Fair Hearing within 30 days after the date that the Notice of Decision should have been mailed.
- E. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 to the parties if a contractor receives a timely request for hearing from the provider.
- F. AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a provider shall send a written request for withdrawal to OAH.

**R9-34-406. Filing a Claim Dispute From a Contractor for Reinsurance**

- A. A contractor shall file a written reinsurance claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. AHCCCS shall mail a written Notice of Decision of the claim dispute for reinsurance to the contractor no later than 30 days after the contractor files the claim dispute with AHCCCS, unless AHCCCS and contractor agree to a longer period.
- C. AHCCCS' written Notice of Decision shall include:
  - 1. The date of the decision.
  - 2. The factual and legal basis for the decision.
  - 3. The contractor's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  - 4. The manner in which a contractor is to file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D. A contractor may request a State Fair Hearing on AHCCCS' Notice of Decision if:
  - 1. The contractor files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date the contractor receives the AHCCCS' written Notice of Decision regarding reinsurance, or
  - 2. AHCCCS does not render a written Notice of Decision regarding reinsurance within 30 days after the claim dispute is filed and the contractor files a written request for a State Fair Hearing within 30 days after the date that the Notice of Decision should have been mailed.
- E. AHCCCS shall mail a notice of a State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the contractor.
- F. AHCCCS shall mail a Director's Decision to the contractor no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the contractor before AHCCCS mails a notice of hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a contractor shall send a written request for withdrawal to OAH.

**R9-34-407. Filing a Claim Dispute for a Claim Involving a FFS Member**

- A. For a claim for a FFS member, the provider shall file a written claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. AHCCCS shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with AHCCCS, unless AHCCCS and the provider agree to a longer period.
- C. AHCCCS' written Notice of Decision shall include:
  - 1. The date of the decision.
  - 2. The factual and legal basis for the decision.
  - 3. The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and

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4. The manner in which a provider is to file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A provider may request a State Fair Hearing on AHCCCS' Notice of Decision if:
  1. The provider files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date the provider receives the AHCCCS' written Notice of Decision, or
  2. AHCCCS does not render a written Notice of Decision within 30 days after the claim dispute is filed and the provider files a written request for a State Fair Hearing based on AHCCCS' failure or refusal to decide the claim dispute within 30 days after the date that the Notice of Decision should have been mailed.
- E.** AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the provider.
- F.** AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a provider shall send a written request for withdrawal to OAH.

**R9-34-408. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The provider or contractor waives the right to a hearing; or
4. The request for hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case.

**R9-34-409. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a provider's rights:

1. Irregularity in the proceedings of a hearing that deprived a provider of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

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NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- 1. Sections Affected**

R12-4-101	Amend
R12-4-104	Amend
R12-4-107	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. § 17-231  
Implementing statutes: A.R.S. §§ 17-231(A)(3) and 17-234
- 3. The effective date of the rules:**

April 3, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: Volume 9 A.A.R. 4201, October 3, 2003  
Notice of Proposed Rulemaking: Volume 9 A.A.R. 4608, October 31, 2003  
Notice of Public Information: Volume 9 A.A.R. 5067, November 21, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mark Naugle, Rules and Risk Manager  
Address: Arizona Game and Fish Department  
2222 W. Greenway Rd. DORR  
Phoenix, AZ 85023  
Telephone: (602) 789-3289  
Fax: (602) 789-3677  
E-mail: mnaugle@gf.state.az.us
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Department is amending R12-4-107 to prescribe a "bonus point hunt number" that will allow those with valid hunting licenses to purchase and accumulate bonus points without entering into the hunt permit-tag draw. The Department is also prescribing a procedure and requirements to reinstate the bonus points of military personnel, military reserve personnel, national guard personnel, and public agency employees who are mobilized in response to a declared national or state emergency or declared action, and are thus unable to use their hunt permit-tags. Amendments to R12-4-101 and R12-4-104 are administrative in nature, made necessary by rule changes in R12-4-107. The rule is also being amended to make technical corrections and drafting style changes to make the rule language consistent with the current requirements for rulemaking language and style.
- 7. A reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 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 rules will benefit the general hunting public by allowing the opportunity for direct purchase of bonus points. The Department has received numerous requests from the public that it prescribe a "bonus point hunt number" so that hunters will not have to forfeit their bonus points under R12-4-107(D), or submit an application for a hunt permit-tag even though the applicant will be unable to use a tag for the applicable season. Conversely, this creates an additional cost to customers who wish to purchase a bonus point. The rules benefit the Department by creating additional revenue for wildlife management efforts through the opportunity for direct purchase of bonus points. Amendments to R12-4-101 and R12-4-104 are administrative in nature, made necessary by rule changes in R12-4-107. The rules also directly benefit military service personnel and public employees during declared national or state crisis or declared

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action. In R12-4-107, the Department prescribes a procedure to reinstate the bonus points of such personnel who are unable to use their tags if they are drawn and subsequently called into duty in response to a state or national emergency or declared action. The rules create no additional costs to any political subdivisions of this state, or businesses. The rules do not impact private or public employment. Because the Department is not supported by the state general fund, the rules do not affect state revenues. The Department has determined there are no alternative methods of achieving the purpose of the rules.

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

Minor grammatical and formatting changes were made at the request of G.R.R.C. staff.

**11. A summary of the comments made regarding the rules and the agency response to them:**

The Department has received one written comment.

Written Comment: Although I am generally in favor of the rulemaking, I do not believe it is necessary to charge the price of a hunt permit-tag to acquire a bonus point. Also, children under the age of 10 should be allowed to purchase bonus points as well. If allowed, the Department could gain more revenue from the increased purchase of hunting licenses, which is required in order to accumulate bonus points.

Agency Response: The Department disagrees. The rules will benefit the general hunting public by allowing the opportunity for direct purchase of bonus points. The rulemaking will prescribe in rule a means to accumulate bonus points without entering into the draw. Under R12-4-107(D), hunters forfeit their bonus points for a particular genus if they do not submit a valid application for a hunt permit-tag for that genus for five consecutive years. Knowing this, some hunters choose to enter the hunt permit-tag draw, even though they may not be able to use the tag if they are issued one. In cases when a hunter is drawn for a tag but is unable to use it, the tag would be left unused, and another hunter who could have used the tag would be deprived the wildlife opportunity. This rulemaking resolves that situation by prescribing a method of accumulating bonus points by submitting an application under a "bonus point hunt number." Applicants who wish to retain or accumulate bonus points without entering into the draw will be able to do so with the additional benefit of not impacting the odds of the permit-tag draw or depriving wildlife opportunities of other applicants. However, the rulemaking will allow those under the age of 10 to purchase bonus points, as long as they have passed a hunter education course. Under A.R.S. § 17-335, no child under the age of 14 may take big game, which includes bonus point species, unless the child has satisfactorily completed a state hunter education course or another comparable hunt education course that is approved by the director.

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

No

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

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Sections

- R12-4-101. Definitions
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing
- R12-4-107. Bonus Point System

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

**R12-4-101. Definitions**

A. In addition to the definitions provided in A.R.S. § 17-101, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless the context otherwise requires:

1. "Artificial lures and flies" means man-made devices intended as visual attractants for fish and does not include living or dead organisms or edible parts ~~thereof~~ of those organisms, natural or prepared food stuffs, artificial salmon eggs, artificial corn, or artificial marshmallows.
2. "Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

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- ~~2-3.~~ "Commission order" means a document adopted by the Commission that does any or all of the following: open, close, or alter seasons and open areas for taking wildlife; specify wildlife that may or may not be taken; set bag or possession limits for wildlife; or set the number of permits available for limited hunts.
- ~~3-4.~~ "Crayfish net" means a net not exceeding 24 inches on a side or in diameter that is retrieved by means of a hand-held line.
- ~~4-5.~~ "Hunt area" means a game management unit, portion of unit, or group of units opened to hunting by a particular hunt number.
- ~~5-6.~~ "Hunt number" means the number assigned by Commission order to any hunt area where a limited number of hunt permits is available.
- ~~6-7.~~ "Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission order.
- ~~7-8.~~ "Hunt permit-tag" means a tag for a hunt for which a Commission order has assigned a hunt number.
- ~~8-9.~~ "Identification number" means a number assigned to each applicant or licensee by the Department, as described in R12-4-111.
- ~~9-10.~~ "License dealer" means a business authorized to sell hunting, fishing, and other licenses pursuant to R12-4-105.
- ~~10-11.~~ "Live baitfish" means any species of live freshwater fish designated by Commission order as lawful for use in taking aquatic wildlife pursuant to R12-4-313.
- ~~11-12.~~ "Management unit" means an area established by the Commission for management purposes.
- ~~12-13.~~ "Minnow trap" means a trap with dimensions not exceeding 12 inches in depth, 12 inches in width, and 24 inches in length.
- ~~13-14.~~ "Muzzle-loading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
- ~~14-15.~~ "Muzzle-loading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
- ~~15-16.~~ "Nonpermit-tag" means a tag for a hunt for which a Commission order has not assigned a hunt number and the number of tags is not limited.
- ~~16-17.~~ "Restricted nonpermit-tag" means a tag issued to a hunter pool applicant for a supplemental hunt under R12-4-115.
- ~~17-18.~~ "Simultaneous fishing" means the taking of fish by two lines and not more than two hooks or two artificial lures or flies per line.
- ~~18-19.~~ "Sink box" means a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water.
- ~~19-20.~~ "Tag" means the authorization that an individual is required to obtain from the Department under A.R.S. Title 17 and 12 A.A.C. 4 before taking certain wildlife.
- ~~20-21.~~ "Waterdog" means the larval or metamorphosing stage of salamanders.
- ~~21-22.~~ "Wildlife area" means an area established pursuant to 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission order, the following definitions apply:

1. "Antlered" means having an antler fully erupted through the skin and capable of being shed.
2. "Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
3. "Buck antelope" means a male pronghorn antelope with a horn longer than its ear.
4. "Bull elk" means an antlered elk.
5. "Ram" means any male bighorn sheep, excluding male lambs.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing**

- A.** For the purposes of this Section, "group" means all applications contained in a single envelope or submitted electronically over the internet as part of the same application. No more than four individuals may apply as a group except that no more than two individuals may apply as a group for bighorn sheep. Nonresidents, see subsection R12-4-114(D).
- B.** An applicant applying for a hunt permit-tag or a bonus point shall apply using a Hunt Permit-tag Application Form, available at Department offices, the Department's internet web site, and license dealers. An applicant using the Hunt Permit-tag Application Form to apply for a hunt permit-tag or a bonus point shall also apply at times and locations established by the hunt permit-tag application schedule that is published annually by the Department and available at Department offices, the Department's internet web site, and license dealers.
- C.** An applicant shall sign the Hunt Permit-tag Application Form, or provide permission to another person to sign the application form for them. If applying electronically over the internet, an applicant shall attest to, or provide permission to another person to attest to, the information electronically provided.
- D.** Each applicant shall provide the following information on the Hunt Permit-tag Application Form:
1. Name, address, residency status, and date of birth;
  2. The applicant's social security number, as required under A.R.S. §§ 25-320(K) and 25-502(E)(K), and the applicant's Department identification number, if different from the social security number on the Hunt Permit-tag Application Form;

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3. If licensed to take wildlife in this state, the number of the applicant's license for the year ~~in which the hunt will take place~~ that corresponds with the applicable hunt number;
  4. If not licensed for the year ~~in which the hunt will take place~~ that corresponds with the applicable hunt number, complete the License Application portion of the Hunt Permit-tag Application Form, providing the applicant's name, Department identification number, address, class of license for which application is made, residency status, length of Arizona residency (if applicable), date of birth, sex, weight, height, and color of hair and eyes; and
  5. Each applicant under the age of 14 applying for a hunt other than big game and not required to have a license under A.R.S. § 17-335(B) shall indicate "juvenile" in the space provided for the license number on the Hunt Permit-tag Application Form.
- E. Each applicant shall enclose as part of the hunt permit-tag application, fees as set in R12-4-102 for the following:
1. The fee for the ~~appropriate~~ applicable hunt permit-tag, unless application is submitted ~~online~~ electronically over the internet or telephone;
  2. A permit application fee; and
  3. If a license is requested, a fee for the license.
- F. Each applicant shall enclose payment as part of the hunt permit-tag application, made payable, in U.S. currency, to the Arizona Game and Fish Department by certified check, cashier's check, money order, or personal check. If applying electronically over the internet or telephone, an applicant shall include as a part of the hunt permit-tag application, payment by valid credit card.
- G. Each applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the drawing, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
- H. Each applicant shall make all hunt choices for the same genus within one application.
- I. An applicant shall not include applications for different genera of wildlife in the same envelope.
- J. All members of a group shall apply for the same hunt numbers and in the same order of preference. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.
- K. Each applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule published annually by the Department.
  2. For genera that have multiple hunts within a single calendar year, hunters that successfully draw a hunt permit-tag during an earlier season may apply for a later season for the same genus if they have not taken the bag limit for that genus during a preceding hunt in the same calendar year.
  3. If the bag limit is more than one per calendar year, any person may apply as specified in the hunt permit-tag application schedule published annually by the Department for remaining hunt permit-tags in unfilled hunt areas.
- L. A person shall not apply for a bighorn sheep or buffalo hunt permit-tag when that person has taken the bag limit for that species.
- M. To participate in the bonus point system, an applicant shall comply with R12-4-107.
- N. Any Hunt Permit-tag Application Form not prepared or submitted in accordance with this Section, or not prepared in a legible manner, is not valid and shall be rejected and all fees refunded. If the Department rejects an application from any member of a group, the Department shall reject all applications from the group.
- O. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.
- P. The Department shall mail hunt permit-tags to successful applicants. The Department shall return to ~~the an~~ applicant designated "A" on the Hunt Permit-tag Application Form overpayments and hunt permit-tag and license fees received with an unsuccessful application. Permit application fees received with valid applications shall not be refunded. Hunt permit-tag fees and license fees submitted with an application for a bonus point shall not be refunded.
- Q. If the Director determines that Department error resulted in the rejection of an application ~~for a hunt permit tag~~, the Director may authorize additional hunt permit-tags or the awarding of a bonus point in order to correct the error, provided the issuance of additional permits will have no significant impact on the wildlife population to be hunted and the application for a hunt permit-tag would have otherwise been successful based on its random number. An applicant who is denied a hunt permit-tag or a bonus point under this procedure may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

**R12-4-107. Bonus Point System**

- A.** For the purpose of this Section, "bonus point hunt number" means the hunt number assigned by the Commission in a Commission Order for use by an applicant applying only for a bonus point for a genus identified in this Section.
- A-B.** The bonus point system grants each person one entry in each drawing for elk, buffalo, bighorn sheep, antelope, or deer for each bonus point which that person has accumulated under this Section. Each bonus point entry is in addition to the entry normally granted by R12-4-104. When processing "group" applications as defined in R12-4-104, the Department shall use the average number of bonus points accumulated by the persons in the group, rounded to the nearest whole number. If the average is .5, the total will be rounded up to the next highest number.

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- B-C.** ~~The Department shall award one bonus point to each time an applicant who submits a valid but unsuccessful application for a hunt permit-tag, provided that~~ Hunt Permit-tag Application Form if all of the following apply:
1. The application is unsuccessful in the drawing, or the application is for a bonus point only;
  - ~~2.~~ 2. The application is not for hunt permit-tags left over after the drawing which are available on a first-come, first-served basis as prescribed in R12-4-114; and
  - ~~3.~~ 3. Before the drawing, the applicant, before the drawing, has purchased a hunting license valid for the year in which the hunt will take place that corresponds with the applicable hunt number. The applicant shall either provide the hunting license number on the application, or submit an application and fees for the license with the drawing application Hunt Permit-tag Application Form, indicating that the applicant is to be issued the license even if not drawn for a hunt permit-tag.
- D.** Each applicant for a bonus point shall:
1. Submit a valid Hunt Permit-tag Application Form, as prescribed in R12-4-104, with the Commission-assigned bonus point hunt number for the particular genus as the first choice hunt number on the application. Placing the bonus point hunt number as a choice other than the first choice invalidates the application;
  2. Include with the application payment for the applicable hunt permit-tag fee for the particular genus, the permit application fee, and if a license is requested, a fee for the license; and
  3. Submit only one Hunt Permit-tag Application Form for the same genus for each season that bonus points are issued for that season.
- C-E.** ~~Each bonus point accumulated is valid only for the genus designated on the unsuccessful application~~ Hunt Permit-tag Application Form.
- D-F.** ~~Except for permanent bonus points awarded for hunter education, all of a person's accumulated bonus points for a genus are forfeited if:~~
- ~~1. The person is issued a hunt permit-tag for that genus in a computer drawing; or~~
  - ~~2. The person fails to apply for a hunt permit-tag submit a Hunt Permit-tag Application Form for that genus for five consecutive years.~~
- E-G.** ~~An applicant issued a first-come hunt permit-tag under R12-4-114(C)(2)(d) after the computer drawing does not lose bonus points for that tag, and a valid but unsuccessful applicant for a first-come hunt permit-tag remaining after the computer drawing does not gain a bonus points point.~~
- F-H.** ~~The Department shall award one permanent bonus point for each genus upon a person's first graduation from the Department's Arizona Hunter Education Course or for serving as a Department hunter education instructor.~~
- ~~1. The Department shall credit a person who graduated after January 1, 1980, but before January 1, 1991, or a person certified by the Department as an active hunter education instructor after January 1, 1980, with one permanent bonus point for each genus if the person provides the following information on a form available from the Department: Department identification number; name; address; residency status and length of Arizona residency, if applicable; date of birth; sex; weight; height; color of hair and eyes; and, for a person other than an instructor, the month and year of graduation from the Department's Arizona Hunter Education Course.~~
  - ~~2. An instructor or a person who has graduated shall submit the required form 30 days prior to before a drawing's application date deadline, specified in the hunt permit-tag application schedule, in order for the bonus point to be counted by the Department in that drawing.~~
- G-I.** ~~The Department shall make an applicant's total number of accumulated bonus points available on the Department's web site or IVR telephone system. If the applicant disagrees with the total, the applicant shall provide previous notices or proof of compliance with subsection (F) this Section to prove Department error. In the event of an error, the Department shall correct the applicant's record.~~
- H-J.** ~~The Department shall record bonus points under an applicant's Department identification number and the genus on the application. The Department shall not transfer bonus points between persons or genera.~~
- K.** The Department shall reinstate any bonus points forfeited for a successful hunt permit-tag application for military personnel, military reserve personnel, national guard personnel, or public agency employees who are unable to use a hunt permit-tag due to mobilization, activation, or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress, or a governor of the United States or its territories. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this Section. To request that forfeited bonus points be reinstated under these circumstances, an applicant shall submit the following to the Arizona Game and Fish Department, Draw Section, 2222 W. Greenway Rd., Phoenix, AZ 85023:
1. A letter from the applicant requesting reinstatement of bonus points;
  2. The hunt number for which the tag is valid;
  3. Evidence of mobilization or duty status, such as a letter from the public agency or official orders;
  4. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable;
  5. The valid, unused tag, which must be received before the beginning date of the hunt for which the tag is valid, or evidence of mobilization or activation that precluded the applicant from submitting the tag before the beginning date of the hunt.



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

The Arizona Game and Fish Department is promulgating rulemaking following the 2002 five-year rule review of 12 A.A.C. 4, Article 3, Taking and Handling of Wildlife. The review, as required by A.R.S. § 41-1056, established a course of action to amend the rules according to Council standards. Subsequent review of these recommendations evaluated their efficacy in practice and enforcement, resulting in the rulemaking as it is submitted in this Notice.

**R12-4-301. Restrictions for Taking Wildlife in Maricopa County Parks**

The Department will amend the rule as was recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current requirements for rulemaking language and style.

In addition, the Department will amend the rule to allow the trapping of any wildlife species in Maricopa County parks if there is a need to reduce their numbers for the safety of the general public or other wildlife. The Department currently allows the trapping and removal of predatory wildlife for these purposes.

**R12-4-303. Prohibited Devices and Ammunition**

The Department will amend the rule as was recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current APA guidelines for rulemaking language and style.

The Department will amend the rule as follows:

- The title of the rule will be revised to replace “prohibited” with “unlawful” to more accurately reflect the contents of the rule. The revised title will be “Unlawful Devices, Methods, and Ammunition.”
- The introductory subsection will be amended to reflect the change to the title, and to more accurately reflect the nature of the devices, methods and ammunition listed in the rule. Thus, “methods” will be added to the prohibitions.
- The word “posses” in the introductory subsection is misspelled and will be revised to read, “possess.”
- The rule will be amended to delete the provision in subsection (A)(7) that requires that persons using pitfall traps remove them when no longer in use and fill in any holes. This provision will be moved to R12-4-304(E) and (F), since it places requirements on a method of take rather than defining an unlawful device.
- The Department will amend the Article to prohibit bear baiting seasons. As part of this action, a new subsection (B) will be added to make unlawful placing substances in a manner intended to attract bears.

In addition to the recommendations made in the five-year review, the Department will make additional amendments to achieve the objective of effectively managing the state's wildlife:

- Subsection (A)(4) will be amended to make unlawful semiautomatic centerfire rifles with a magazine capacity of more than five cartridges, unless the magazine is modified with a filler or stop that cannot be removed without disassembling the magazine. This will still allow the use of centerfire rifles that are semiautomatic for taking wildlife within certain restrictions.
- The Department will amend the rule to add a new subsection (C) to make manual or powered jacking or prying devices used to take reptiles and amphibians unlawful.
- The Department will add a new subsection to make the rule consistent with federal regulations. Subsection (D) will be added to make unlawful live decoys, recorded bird calls, electronically amplified bird calls, and baits for taking migratory game birds, as prohibited by 50 CFR 20.21. This federal rule will also be incorporated by reference.
- The Department will amend the introductory subsection of the rule to remove references to A.R.S. § 17-309, subsections (A)(6), (10), (19) and (21); but retain the original statute. The Department does this to eliminate the need for future rule amendments that would be required should additional methods of take be found to be unlawful under A.R.S. § 17-309.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

The Department will amend the rule as was recommended in the five-year review submitted to the Council in 2002, and make it consistent with current Administrative Procedures Act guidelines for rulemaking language and style.

The Department will amend the rules as follows:

- Subsection (A)(2)(i), which allows for bear baiting, will be deleted. Most Western states now prohibit bear baiting, and Department records indicate that there have been no requests from the public for a bear-baiting season since 1986. The Department, therefore, believes that it is prudent to delete this provision from R12-4-304(A)(2)(h) and R12-4-318(C)(5). R12-4-303 will also be amended to add subsection (8) to make “substances placed in a manner intended to attract bears” unlawful.

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- Revise subsections (D), (E), and (F) to clarify that it is not the intent of the rule to disallow the attachment of lights to a vehicle or powered watercraft for any purpose except the taking of wildlife.
- The exception for soft shell turtles in subsection (F) will be deleted, since soft shell turtles are an invasive, non-native species, and the Department desires to increase their harvest for the conservation of native wildlife.
- The rule will be amended to add the following to subsections (E) and (F): “Persons using pitfalls as allowed under this Section and not prohibited by R12-4-303 shall remove the pitfalls when no longer in use and shall fill in any holes.” This provision is currently contained in R12-4-303(7), but will be moved to these subsections since it does not define a prohibited device or method of take, but instead places specific restrictions on the use of a method of take.
- Subsections (E) and (F) will be amended to add that pitfall traps of any size shall be checked daily and non-target species released.

In addition to the recommendations made in the five-year review, the Department will amend the rule as follows to achieve the objective of effectively managing the state’s wildlife:

- Add to subsection (A)(2) that bears may only be taken by pursuit with dogs between August 1 and December 31. These dates eliminate pursuit during the seasons when bears raise their young.
- Add to subsection (A)(8) that mountain lion may be taken by pursuit with dogs, as is authorized by R12-4-318.
- Subsection (A)(8)(h) will be amended to remove the restriction that a crossbow may be used to take mountain lion only under a crossbow permit. The Department has determined that a crossbow is sufficient to take mountain lions when authorized by Commission Order during a general season.
- New subsection (A)(9)(k) will be added to authorize the use of .17 rimfire magnum rifles to take turkey.
- Revise subsection (B)(3)(d) to prohibit the use of lead shot to take certain species of migratory game birds, because lead shot can become toxic. This will replace the restriction placed on lead shot in Commission-ordered “nontoxic shot zones,” which have not been used.
- New subsection (B)(3)(e) will be added to restrict shotguns shooting shot so that they are incapable of holding more than two shells in the magazine, unless plugged with a one-piece filler (that cannot be removed without disassembling the gun) that limits the magazine capacity to two shells. This allows the use of shotguns shooting shot, but restricts the use of rapid fire shotguns.

**R12-4-306. Buffalo Hunt Requirements**

The Department will amend the rule principally as was recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current Administrative Procedures Act guidelines for rulemaking language and style.

The Department will amend the rule as follows:

- The title of R12-4-306 will be changed from “Buffalo hunt regulations” to “Buffalo Hunt Requirements.” This will eliminate any confusion with the Department’s annual hunt regulations publication.
- Revise the rule to change “House Rock Ranch” to “House Rock Wildlife Area” since the term “ranch” is no longer used to designate this location.
- Revise the rule to change “Raymond Ranch” to “Raymond Wildlife Area” since this is now the designation for this location.
- Amend subsection (B) to make it more clear, concise, and understandable.
- Amend subsection (C) to make it more clear, concise, and understandable.
- Revise subsection (D) to clearly indicate that the requirements apply to the Raymond Wildlife Area. Also, the last sentence of subsection (D) specifies that the hunter shall shoot only the legal buffalo designated by his or her permit. This provision is fully addressed in R12-4-302, and is found to be unnecessary in this Section. The Department therefore will delete it from the rule.

In addition to the recommendations made in the five-year review, the Department will amend the rule as follows to achieve the objective of effectively managing the state’s wildlife:

- Revise subsection (B) to change check-in requirements at House Rock Wildlife Area to make the process more flexible for the public. Both unsuccessful and successful hunters who harvest buffalo will be required to check out at the House Rock Wildlife Area, or report the kill to the Department in person at any Department office or by telephone.
- Reverse the order of subsections (C) and (D) to place the sequence of events in a more logical order.

**R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts**

The Department will amend the rule as was recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current Administrative Procedures Act guidelines for rulemaking language and style.

The Department will amend the rule as follows:

- Amend the rule to clarify the use of water set traps.
- Clarify subsection (E) to apply only to land sets.

In addition to the recommendations made in the five-year review, the Department will make the following amendments to achieve the objective of effectively managing the state's wildlife:

- Amend subsection (B) to clarify that, although an individual born before January 1, 1967 does not have to successfully complete a trapping education course to acquire a trapping license under A.R.S. § 17-333.02, an individual born after January 1, 1967 must successfully complete a mandatory trapping education course as part of lawful trapping of predatory and fur-bearing animals.
- Amend subsections (D)(2) and (3) to except live confinement traps from restrictions around occupied residences or buildings, and highways or trails. To require that residents seek consent from other residents within 1/2 mile to remove nuisance wildlife from their own property is not consistent with the intent of Title 17 statutes, such as A.R.S. § 17-239. Expanding development has also placed occupied residences and buildings within 100 yards of highways, which has resulted in a circumstantial limitation on the rule.
- Amend subsection (E) for clarity and understandability, and to allow two additional types of land set leghold traps to take wildlife. Advances in modern trap technology necessitate their regulation, as well as requiring safety devices intended to minimize self-mutilation of trapped wildlife and to prevent accidental trapping of domesticated animals.
- New subsection (F) will be added to establish requirements for land leg hold set traps.
- Subsection (M)(3) and (5), formerly (L), will be amended to require that Department personnel or its authorized agents collect transportation tags for bobcat pelts before attaching the bobcat permit tag.

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

The Department will amend the rule principally as was recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current Administrative Procedures Act guidelines for rulemaking language and style.

The Department will amend the rule as follows:

- Revise subsection (B) to delete material that should be prescribed in Department policy rather than rule. This subsection will also be revised to notify the public that the Department has the authority to conduct inspections in accordance with Department policy and that the principal purposes of inspections are wildlife conservation and regulating the use of wildlife.

During subsequent internal analysis of the completed five-year review, the Department has determined that it is impractical to apply certain recommendations due to changing circumstances. Though it will amend the rules to comply with the intent of the recommendations, the Department will depart as follows:

- Subsection (B) will be amended to clarify that the primary purpose for wildlife check stations is for the Department to obtain survey and biological data to assist the agency in its wildlife conservation functions instead of subsection (A). The rule will also be clarified in subsection (C), rather than (A), that as a secondary purpose, the Department may use a check station to ensure compliance with applicable laws.
- A new subsection will not be added to clarify that a mandatory check station is different from a voluntary wildlife survey station, and that individuals are under no obligation to comply with a request to participate in this type of survey.

In addition to the recommendations made in the five-year review, the Department will amend the rule as follows to achieve the objective of effectively managing the state's wildlife.

- Subsection (A) will be revised to delete regulations that should be prescribed in Department policy rather than rule, and to allow the Department to establish mandatory wildlife check stations for any purpose to make them more effective and reactive.
- Subsection (B) will be revised to delete material that should be prescribed in Department policy rather than a rule. This subsection will also be revised to notify the public that the Department has the authority to conduct wildlife inspections in accordance with Agency policy and that the principal purpose of inspections are to ensure compliance with applicable wildlife laws. Subsection (B) will also be amended to authorize the Department to obtain survey and biological data from the species of the greatest conservation need at check stations, or failing that, a Department office. A new requirement will be added for non-permit archery deer hunters to report their harvest, for special

license-tag hunters to submit their horns or antlers and skull or skull cap for inspections and photography, and for successful lion hunters to submit a tooth for analysis.

- Amend the rule to change the order of events to make it linear.
- Subsection (C) will be revised to clarify that the Department may use a check station to ensure compliance with applicable laws, and establish requirements for inspection.

**R12-4-312. Special use permits and stamps for fishing on waters with shared jurisdiction Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction**

The Department will amend the rule principally as was recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current Administrative Procedures Act guidelines for rulemaking language and style.

The Department intends to amend the rule as follows:

- Subsection (B)(1) stipulates that any person fishing from the Arizona shorelines of the waters named in subsection (A) shall have in possession a valid Arizona fishing license, unless exempted pursuant to A.R.S. § 17-335. Exemptions from the requirements of R12-4-312(B)(1) are also allowed under the provisions of R12-4-310 and R12-4-311, and these rules should be added to the list of exemptions in subsection (B)(1).
- Subsection (C)(1) stipulates that any person fishing in the waters of Mittry Lake or Topock Marsh shall have in possession a valid Arizona fishing license, unless exempted pursuant to A.R.S. § 17-335. Exemptions from the requirements of R12-4-312(C)(1) are also allowed under the provisions of R12-4-310 and R12-4-311, and these rules should be added to the list of exemptions in subsection (C)(1).
- Subsection (D)(1) stipulates that any person fishing in the Arizona portion of Lake Powell shall have in possession a valid Arizona fishing license, unless exempted pursuant to A.R.S. § 17-335. Exemptions from the requirements of R12-4-312(D)(1) are also allowed under the provisions of R12-4-310 and R12-4-311, and these rules should be added to the list of exemptions in subsection (D)(1).

In addition to these recommendations, the Department is making additional necessary, nonsubstantive amendments to R12-4-312 to reflect the mutual dissolution of a procedural arrangement between the Arizona Game and Fish Commission and the Nevada Department of Wildlife Commission set in each states' rules. In 1988, both states agreed to establish their own rules requiring fishing license holders from one state to purchase a Colorado River special use stamp from the other state. Arizona sells the Nevada-Colorado River special use stamp to Arizona fishers, and Nevada sells the Arizona-Colorado River special use stamp to Nevada fishers. The objective of both states' rules is to ensure fair use of the Colorado River's wildlife resources. This arrangement allows both states to quantify the use of the resources and create reliable survey data, and still receive revenues through purchase of stamps for use of the resources. At the end of the fiscal year, each state agrees to an audit, and remits the revenues that the states received from purchases of the other states' stamps. In other words, the revenues that Arizona receives selling Nevada-Colorado River special use stamps to Arizona fishers is returned to Nevada, and the revenues that Nevada receives selling Arizona-Colorado River special use stamps to Nevada fishing license holders is returned to Arizona.

However, the Nevada Department of Wildlife has initiated rulemaking to amend their rule requiring Nevada fishing license holders to purchase Arizona-Colorado River stamps. Nevada fishers will now purchase Nevada-Colorado River special use stamps, and the Nevada Department of Wildlife will retain those monies. The Arizona Game and Fish Department must amend its rule in kind to be consistent with the Nevada's rules, and require Arizona fishers to purchase an Arizona-Colorado River special use stamp. These additional amendments will not substantially increase or decrease the Department's authority to regulate use of state wildlife resources on the Colorado River, nor will it substantially change regulations placed on the general public. Fishing license holders that choose to take aquatic wildlife on the Colorado River will still be required to purchase a special use stamp at the same cost, and with the same availability. Arizona fishers will still purchase a special use stamp in their state, and Nevada fishers will still purchase the stamp in theirs.

The Department intends to amend subsections (A) and (B) of the rule as follows:

- Amend subsections (A)(1) and (2) to require that any individual fishing on the waters stated in subsection (A) shall have in possession a valid Arizona-Colorado River special use stamp affixed to a valid Arizona fishing license, or a valid Nevada-Colorado River special use stamp affixed to a valid Nevada fishing license.
- Amend subsection (B)(2) to require that any individual fishing from the Arizona shorelines of the waters named in subsection (A), unless exempted by R12-4-310 or R12-4-311, shall have in possession a valid Nevada-Colorado River special use stamp affixed to a valid Nevada fishing license.

**R12-4-313. Lawful Methods of Taking Aquatic Wildlife**

The Department will amend the rule as recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current APA guidelines for rulemaking language and style.

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The Department will amend the rule as follows:

- Subsection (B)(2)(b)(i) prescribes that live baitfish may be taken for personal use as bait by a cast net not to exceed a radius of 3 feet measured from the horn to the leadline. The 3-foot measurement has been found to be too restrictive, since it is less than the minimum standard radius of cast nets currently being manufactured. The Department will amend the rule to change the 3-foot measurement to 4 feet.
- Subsection (B)(2)(b)(ii) prescribes that live baitfish may be taken for personal use as bait by a minnow trap, as defined in R12-4-101. The Department has determined that this subsection is inadequate because it does not require that ownership identification information be attached to an unattended minnow trap. The Department will amend the rule to require that all unattended minnow traps shall have attached water resistant identification legibly bearing the name, address, and fishing license number of the owner of the trap.

During subsequent internal analysis of the review, the Department has determined that it is impractical to apply certain recommendations due to changing circumstances and reexamination of implementation. Though it will amend the rule to comply with the intent of the recommendations, the Department will depart as follows:

- In reviewing the rule, the Department has concluded that the rule should be restructured to include seasons for the take of aquatic wildlife. The Department will amend the rule accordingly, but will adopt a new Section to accomplish this. The new Section R12-4-317 will be based upon the model of R12-4-318, which prescribes seasons for wild mammals, birds, and reptiles. The title of the rule will be changed to “Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles,” and the new rule will address seasons for taking aquatic wildlife.

In addition to the recommendations made in the five-year review, the Department will make the following amendments to achieve the objective of effectively managing the state’s wildlife:

- Amend subsection (A) to clarify lawful methods of taking aquatic wildlife defined in statute.
- New Subsection (B) will be added to clarify that the Commission may, through Commission order, prescribe legal sizes for possession of aquatic wildlife. This will establish the authorization to cite those who possess wildlife greater than the slot limit.
- Subsection (D) will be deleted and moved to new Section R12-4-317, “Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles.”
- Amend subsection (C)(1) to allow the use of seine net to take shad.

**R12-4-319. Use of Aircraft to Take Wildlife**

The Department will amend the rule as recommended in the five-year rule review submitted to the Council in 2002, and make it consistent with current APA guidelines for rulemaking language and style. The Department will amend the rule as follows:

- Subsection (A)(3) has been found to be awkward and confusing. The Department will revise the definition of “locate” to mean any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.
- Subsection (D) has been found to be awkward and confusing. The Department intends to revise the subsection to state that except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, an individual shall not locate or assist in locating wildlife from or with the aid of an aircraft in a hunt unit with an open big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.

In addition to the recommendations made in the five-year review, the Department proposes the following additional rulemaking to achieve the objective of effectively managing the state’s wildlife:

- Subsection (D), formerly (E), is too narrow in scope, and does not adequately address issues relating to use of aircraft to take wildlife. The Department will amend the rule to reference R12-4-115 and R12-4-120, dealing with special big game license tags, and to make unlawful the use of aircraft to locate wildlife 48 hours before or during a Commission-ordered special season for special big game license tag holders or anyone who assists or will assist the tag holder.

**R12-4-320. Harassment of Wildlife**

In order to address issues related to the harassment of wildlife with aircraft or motorized terrestrial or aquatic vehicles, the Department will adopt a new Section establishing such actions as unlawful.

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The Department shall adopt the rule as follows:

- A.** In addition to the provisions of A.R.S. § 17-301, it is unlawful to harass, molest, chase, rally, concentrate, herd, intercept, torment or drive wildlife with or from any aircraft, as defined in R12-4-319, or with or from any motorized terrestrial or aquatic vehicle.
- B.** This Section does not apply to individuals acting:
1. Under the provisions of A.R.S. § 17-239; or
  2. Within the scope of official duties as an employee or authorized agent of the state or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops.

**R12-4-302. Use of Tags**

**R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wild Mammals, Birds, and Reptiles**

**R12-4-310. Fishing Permits**

**R12-4-311. Exemptions from Requirements to Possess an Arizona Fishing License While Taking Aquatic Wildlife**

**R12-4-314. Possession, Sale, Transportation, and Importation of the Carcasses and Parts of Aquatic Wildlife**

**R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers**

**R12-4-316. Possession, Transportation or Importation of Live Baitfish, Crayfish, or Waterdogs**

**R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles**

**R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

Rule changes for R12-4-302, R12-4-305, R12-4-310, R12-4-311, R12-4-314 (which is being repealed), R12-4-315, R12-4-316, R12-4-317 (which is being adopted as a New Section), and R12-4-318 are administrative in nature, made necessary by rule changes in the other rules of the Article, and may result in a negligible impact to the Department. The rulemaking also makes technical corrections and drafting style changes to make the rule language consistent with the current requirements for rulemaking language and style. The only costs of the amendments are those associated with the rulemaking process itself. The Department will benefit from consistent implementation of associated rule changes, while the public will benefit from having improved rules that are clear, concise, and more easily understandable.

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

The agency did not review any study relevant to the rulemaking.

- 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:**

**R12-4-301. Restrictions for Taking Wildlife in Maricopa County Parks**

The rulemaking will result in a benefit to the general public, licensed trappers of this state, Maricopa County and the Arizona Game and Fish Department by allowing more species of nuisance and depredate wildlife to be removed from Maricopa County parks by trapping, which will increase safety. The rulemaking will result in no additional costs to political subdivisions of this state. The rulemaking will result in no additional costs to businesses of this state, or affect revenues or payroll expenditures of employers. The rulemaking will result in no impact on private or public employment in businesses, agencies or political subdivisions of this state; or state revenues. The Department has determined there are no less intrusive or costly alternative methods of achieving the rulemaking.

**R12-4-303. Prohibited Devices and Ammunition**

The rulemaking will result in an impact to the Department, the general public, and may result in a minimal impact to hardware retailers by making the use of jacking devices to take reptiles and amphibians unlawful in order to conserve wildlife habitat; making state regulations more consistent with federal guidelines; and authorizing the use of modified

semiautomatic centerfire rifles. It is not certain whether or not the rulemaking will result in a measurable impact to hardware retail stores, because there is no means to indicate how many jacking devices are sold for the purpose of taking reptiles or amphibians. The rulemaking will result in no impact to any political subdivisions of this state; private or public employment in businesses, agencies or political subdivisions; or state revenues. The Department has determined there are no less costly or intrusive alternative methods of achieving the purpose of the rulemaking. There are no costs associated with the rulemaking, other than costs associated with the regular rulemaking. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

The rulemaking will result in an overall benefit to the general hunting public, sporting goods retailers and the Department by redefining guidelines for the take of bear, mountain lion, turkey, and soft-shelled turtles. The rulemaking will result in no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Department has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no costs associated with the rulemaking. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-306. Buffalo Hunt Requirements**

The rulemaking will result in a benefit to the general hunting public and the Department by reestablishing hunting requirements for buffalo and check-in procedures for what will heretofore be referred to as the House Rock Wildlife Area. The rulemaking will result in no impact to political subdivisions of this state; businesses, nor revenues or payroll expenditures of employers; private or public employment in businesses, agencies or political subdivisions of this state; or state revenues. The Department has determined there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no costs related to the rulemaking. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts**

The rulemaking will result in an impact to the Department, trappers, allied industries, and the general public; as trapping guidelines are amended to allow for additional methods of trapping, and for public safety. The rulemaking will result in no additional costs to political subdivisions of this state. The rulemaking may result in increased job opportunities for trappers as rules are clarified and allowances are made to use confinement traps for nuisance and depre-dating wildlife on private property and around businesses. The rulemaking will result in a benefit to businesses that employ licensed trappers as rules are updated to be more relevant to the practice of trapping, and additional methods are allowed. The rulemaking may result in an increase in sales tax as more methods of trapping are allowed, and more trapping opportunities are created. The Department has determined that there are no less intrusive or costly alternative methods to achieve the purpose of the rulemaking. There are no costs associated with the rulemaking, other than the regular cost of rulemaking. For these reasons, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

The rulemaking will result in an impact to the Department and the general hunting public that takes advantage of mountain lion wildlife opportunities as the rule is clarified and amended to require submission of samples of taken wildlife for management statistics. The rulemaking will result in no impact to political subdivisions of this state; private or public employment in businesses, agencies or political subdivisions; or state revenues. The rulemaking will result in no impact to small businesses. The Department has determined there are no alternative methods of achieving the purpose of the rulemaking. For these reasons, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-312. Special use permits and stamps for fishing on waters with shared jurisdiction**

The rulemaking will make Arizona fishing regulations consistent with Nevada fishing regulations regarding use of wildlife resources on the Colorado River. The rulemaking will impact the Arizona Game and Fish Department and the fishing license holders of this state that choose to fish on the waters of the Colorado River, including Lake Mead and Lake Mohave. The rulemaking will result in a relatively small loss to the Department of \$60,000, which represents less than .001% of its annual revenues. Decreased revenues will be offset, however, by a reduction in administration and processing costs to conduct an interstate audit and remission of fees. The rulemaking will have very little effect on the fishing public, because fishers will still be required to purchase a special use stamp to fish on the river. There will be no change in the cost or the availability of the stamp to the general public. There will be an impact to the fishing public if these amendments are not adopted, though. Because Nevada will no longer require an Arizona

license holder to purchase a Nevada special use stamp, they will no longer be sold to them. However, Arizona regulations still require the Nevada stamp. This will result in the unintentional limitation of fishing privileges. The rulemaking will not affect other state agencies, political subdivisions, businesses of this state, nor public or private employment. Because the Department is not supported by the state general fund, the rulemaking will not affect it. The Department has determined that there are no alternate means of achieving the objectives of the rulemaking. Because of this, the Department has determined that the benefits of the rulemaking outweigh the costs.

**R12-4-313. Lawful Method of Taking Aquatic Wildlife**

The rulemaking will result in an impact to the Department, the general fishing public and allied industries as the rule is clarified, and amended to allow the taking of shad by seine net. The rulemaking will result in no impact to any political subdivisions of this state; or private or public employment in businesses, agencies or political subdivisions of this state. The rulemaking may result in an increase in sales tax revenues from an increased demand for fishing supplies. The Department has determined there are no less costly or intrusive alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no costs associated with the rulemaking. For these reasons, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-319. Using Aircraft to Take Wildlife**

The rulemaking will result in an overall benefit to the Department and the general hunting public by closing a loophole in the use of aircraft to locate wildlife for holders of special big game license tags. The rulemaking may result in a minimal impact to businesses that solicit aircraft services for the purpose of locating wildlife. The rulemaking will result in no additional costs to other political subdivisions or agencies of this state. The rulemaking will not impact private or public employment, nor will it have an effect on state revenues. The Department has determined there are no alternate methods for achieving the purposes of the rulemaking.

**R12-4-320. Harassment of Wildlife**

The rulemaking will result in a benefit to the Department and the general public by allowing the Department to regulate activities using water, air and land crafts that disturb wildlife and habitat. The rulemaking will result in a benefit to political subdivisions of this state, particularly state counties, which receive complaints about disturbances caused by vehicles and aircraft, but do not have the authority to manage these activities. The rulemaking will result in no impact to businesses or revenues or payroll expenditures of employers; private or public employment in businesses, agencies or political subdivisions; or state revenues. The Department has determined that there are no less intrusive or costly alternative methods to achieve the purpose of the rulemaking. Other than costs associated with the regular rulemaking, the rulemaking will result in no direct additional costs. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

**R12-4-302. Use of Tags**

**R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wild Mammals, Birds, and Reptiles**

**R12-4-310. Fishing Permits**

**R12-4-311. Exemptions from Requirements to Possess an Arizona Fishing License While Taking Aquatic Wildlife**

**R12-4-314. Possession, Sale, Transportation, and Importation of the Carcasses and Parts of Aquatic Wildlife**

**R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers**

**R12-4-316. Possession, Transportation or Importation of Live Baitfish, Crayfish, or Waterdogs**

**R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles**

**R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

Rule changes for R12-4-302, R12-4-305, R12-4-310, R12-4-311, R12-4-314 (which is being repealed), R12-4-315, R12-4-316, R12-4-317 (which is being adopted as a New Section), and R12-4-318 are administrative in nature, made necessary by rule changes in the other rules of the Article, and may result in a negligible impact to the Department. The rulemaking also makes technical corrections and drafting style changes to make the rule language consistent with the current requirements for rulemaking language and style. The only costs of the amendments are those associated with the rulemaking process itself. The Department will benefit from consistent implementation of associated rule changes, while the public will benefit from having improved rules that are clear, concise, and more easily understandable.

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

**R12-4-312. ~~Special use permits and stamps for fishing on waters with shared jurisdiction~~ Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction**

The Department has amended the rule where necessary in accordance with current Administrative Procedure Act guidelines for rulemaking language and style, as recommended by the Governor's Regulatory Review Council staff. The Department is making additional necessary amendments to R12-4-312 to reflect the mutual dissolution of a procedural arrangement between the Arizona Game and Fish Commission and the Nevada Department of Wildlife Commission set in each states' rules. In 1988, both states agreed to establish their own rules requiring fishing license holders from one state to purchase a Colorado River special use stamp from the other state. Arizona sells the Nevada-Colorado River special use stamp to Arizona fishers, and Nevada sells the Arizona-Colorado River special use stamp to Nevada fishers. The objective of both states' rules is to ensure fair use of the Colorado River's wildlife resources. This arrangement allows both states to quantify the use of the resources and create reliable survey data, and still receive revenues through purchase of stamps for use of the resources. At the end of the fiscal year, each state agrees to an audit, and remits the revenues that the state received from purchases of the other state's stamps. In other words, the revenues that Arizona receives selling Nevada-Colorado River special use stamps to Arizona fishers is returned to Nevada, and the revenues that Nevada receives selling Arizona-Colorado River special use stamps to Nevada fishing license holders is returned to Arizona.

However, the Nevada Department of Wildlife has initiated rulemaking to amend its rule requiring Nevada fishing license holders to purchase Arizona-Colorado River stamps. Nevada fishers will now purchase Nevada-Colorado River special use stamps, and the Nevada Department of Wildlife will retain those monies. The Arizona Game and Fish Department must amend its rule to be consistent with Nevada's rules, and require Arizona fishers to purchase an Arizona Colorado River special use stamp. These additional amendments will not substantially increase or decrease the Department's authority to regulate use of state wildlife resources on the Colorado River, nor will it substantially change regulations placed on the general public. Fishing license holders that choose to take aquatic wildlife on the Colorado River will still be required to purchase a special use stamp at the same cost with the same availability. The additional amendments will also create a relatively small economic impact to the Department. The Department generated approximately \$60 million dollars in revenue last year. The Department is anticipating a loss of approximately \$60 thousand dollars from the purchase of the special use permits from Nevada residents. This represents approximately .001% of the Department's total revenue. This estimated loss of revenue from the sale of the stamps will be off-set because the Department will no longer be required to perform the internal processes of calculating, verifying, and remitting monies to Nevada. There will be an impact to both the Department and fishers of this state that choose to fish the Colorado River if these amendments are not adopted. Nevada has adopted rules that no longer require an Arizona fisher to purchase a special use stamp to fish on the waters of the Colorado River, and therefore will not provide the stamp to Arizona fishers. However, Arizona's regulations currently require its fishers to purchase the stamp. Thus, Arizona fishers have no means of fishing on the waters of the Colorado River. The circumstances created by not adopting these amendments could result in the unintended limitation of fishing privileges in this state.

Under A.R.S. § 41-1025(B), these changes are not substantial because:

- The Nevada Department of Wildlife Commission has initiated rulemaking to amend its rule requiring Nevada fishing license holders to purchase a Nevada-Colorado river special used stamp, and the state of Nevada will retain those monies. Therefore, the Arizona Game and Fish Department needs the additional rule amendments to be consistent with Nevada.
- The modified rule language is informative and does not penalize or restrict the residents of Arizona, or place any additional limitations or burdens on the public. Arizona and Nevada fishing license holders that choose to take aquatic wildlife on the Colorado River will still be required to purchase a special use stamp at the same cost with the same availability.
- The modifications to the rule do not change the authority of the Department or the levels of regulation and enforcement.
- The effect of the final rule is the same as the effect of the proposed rule. The only real change to the consumer will be the name of the special use permit stamp they will be required to purchase.
- The public, small businesses, and the State of Arizona will not be negatively impacted by these amendments.

**11. A summary of the comments made regarding the rules and the agency response to them:**

The Department has received no comments regarding the rules.

**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:**

50 CFR 20.21 (6/14/01) is incorporated in R12-4-303. ~~Prohibited~~ Unlawful Devices, Methods, and Ammunition.

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

No

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

Section

- R12-4-301. Restrictions for Taking Wildlife in Maricopa County Parks
- R12-4-302. Use of Tags
- R12-4-303. ~~Prohibited Unlawful~~ Devices and Ammunition
- R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
- R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of ~~Wild Mammals, Birds, and Reptiles~~ Wildlife
- R12-4-306. Buffalo ~~hunt regulations~~ Hunt Requirements
- R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts
- R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
- R12-4-310. Fishing Permits
- R12-4-311. Exemptions from ~~requirement to possess an Arizona fishing license while taking aquatic wildlife~~ Requirement to Possess an Arizona Fishing License While Taking Wildlife
- R12-4-312. ~~Special use permits and stamps for fishing on waters with shared jurisdiction~~ Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction
- R12-4-313. Lawful Methods of Taking Aquatic Wildlife; ~~Restrictions~~
- R12-4-314. ~~Possession, Sale, Transportation, and Importation of the Carcasses and Parts of Aquatic Wildlife~~ Repealed
- R12-4-315. Possession of ~~live fish; unattended live boxes and stringers~~ Live Fish; Unattended Live Boxes and Stringers
- R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs
- R12-4-317. ~~Repealed~~ Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles
- R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
- R12-4-319. Use of Aircraft to Take Wildlife
- R12-4-320. Harassment of Wildlife

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

**R12-4-301. Restrictions for Taking Wildlife in Maricopa County Parks**

- A. ~~The lands~~ Lands and water ~~lying~~ within the boundaries of all Maricopa County ~~Parks~~ parks are open to hunting and trapping when a Commission order establishes an open season. ~~Persons~~ Individuals may use only the following methods of take:
  - 1. Archery hunting, when lawful for the wildlife taken under R12-4-304.
  - 2. Shotguns shooting shot, when taking small game, predatory, furbearing, and nongame animals during quail season in Lake Pleasant, White Tank Mountains, McDowell Mountain, and Estrella Mountain ~~Regional Parks~~. See regional park, subject to subsection (F).
- B. ~~A person~~ An individual is prohibited from using rifled firearms within ~~the all~~ Maricopa County ~~parks system~~ parks except to take deer during deer seasons established by Commission order with concurrence of the Maricopa County Recreation Services Department.
- C. ~~A person~~ An individual shall not trap within ~~the any~~ Maricopa County ~~park system~~ park except under the provisions of A.R.S. § 17-239, or when the Maricopa County Recreation Services Department and the Arizona Game and Fish Department determine that ~~predatory animal~~ wildlife numbers need to be reduced in a park area because of a danger to the public or other wildlife.
- D. ~~A person~~ An individual shall not hunt within 1/4 mile of any developed picnic area, boat ramp, shooting range, golf course, or other recreational area developed for public use.
- E. ~~Persons~~ Individuals entering any ~~part of the~~ Maricopa County ~~Park System~~ park for the purpose of hunting shall declare their intention of hunting and pay any fees ~~as~~ required by Maricopa County Recreation Services Department at an entry station when entering the park, if the park has an entry station in operation.
- F. This rule does not authorize ~~a person~~ an individual to use a method of take ~~which~~ that is prohibited by a city ordinance.

**R12-4-302. Use of Tags**

- A. In addition to meeting the requirements of A.R.S. § 17-331, an individual ~~taking~~ who takes wildlife shall have in possession any tag required for the particular season or hunt area.

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- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. An individual ~~taking~~ who takes wildlife shall not possess a tag issued to anyone else or attach to wildlife a tag issued to anyone else, except as provided in R12-4-217.
- D. An individual shall not allow a tag issued to that individual to be attached to ~~an animal~~ wildlife killed by anyone else, except as provided in R12-4-217.
- E. An individual shall not attach a tag issued to that individual to ~~an animal~~ wildlife killed by anyone else, except as provided in R12-4-217.
- F. An individual shall ~~use a tag to take~~ and tag only the ~~animal~~ wildlife identified on the tag.
- G. An individual shall use a tag hunt permit-tag only in the season and hunt area for which the hunt permit-tag is issued valid.
- ~~H. Nonpermit tags are not valid in hunt areas for which hunt permit tags are required.~~
- ~~H.~~ H. An individual who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established for that genus or species.
- ~~J.~~ J. Immediately Unless exempted under R12-4-217, immediately after an individual kills ~~an animal~~ wildlife, the individual shall attach ~~the~~ his or her valid tag to the ~~animal~~ wildlife carcass in the following manner:
  - 1. Remove all of the detachable paper ~~cover~~ covering from the adhesive back of the tag-;
  - 2. Seal the exposed adhesive portions of the tag around the ~~animal~~ wildlife so the tag cannot be removed or reused and all printing on the face of the tag is visible- and:
    - a. For a deer, elk, or antelope, seal the tag around the antler or horn, or through the gambrel of a hind leg-;
    - b. For a javelina, bighorn sheep, mountain lion, buffalo, or bear, seal the tag through the gambrel of a hind leg-; and
    - c. For a turkey, sandhill crane, or pheasant, seal the tag around the neck or a leg.
    - d. ~~For a sandhill crane, seal the tag around the leg or the neck.~~
- ~~K.~~ J. When If a tag has been sealed or mutilated, or the transportation and shipping permit portion of the tag included within the tag is signed or filled out, the tag is no longer valid for taking wildlife.
- ~~L.~~ This rule is effective January 1, 1996.

**R12-4-303. Prohibited Unlawful Devices, Methods, and Ammunition**

- A. In addition to the prohibitions prescribed in A.R.S. §§ 17-301(A) and 17-309(A)(6), (10), (19), and (21), the following devices, methods, and ammunition are ~~prohibited unlawful~~ prohibited unlawful for taking any wildlife in Arizona this state, and a person An individual shall not use or ~~posses~~ possess any of the following while taking wildlife:
  - 1. Fully automatic firearms, including firearms capable of selective automatic fire;
  - 2. Tracer ~~ammunition~~, armor-piercing or full-jacketed ~~bullets~~ ammunition designed for military use;
  - 3. Shotguns larger than 10 gauge; or shotguns capable of holding more than ~~two~~ five shells in the magazine, unless plugged with a one-piece filler ~~limiting that cannot be removed without disassembling the gun~~, and that limits the magazine capacity to 2 five shells, ~~which cannot be removed without disassembling the gun~~;
  - 4. Semiautomatic centerfire rifles with a magazine capacity of more than 5 five cartridges, unless the magazine is modified with a filler or stop that cannot be removed without disassembling the magazine;
  - 5. Contrivances designed to silence, muffle, or minimize the report of a firearm;
  - 6. Poisoned projectiles, or projectiles ~~containing that contain~~ explosives; or
  - 7. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted in A.R.S. § 17-239, or as allowed by a scientific collecting permit issued under A.R.S. § 17-238. ~~Persons using pitfalls as allowed under this rule shall remove the pitfalls when no longer in use and fill in any holes.~~
- B. An individual shall not place substances in a manner intended to attract bears.
- C. An individual shall not use manual or powered jacking or prying devices to take reptiles or amphibians.
- D. An individual shall not use live decoys, recorded bird calls, electronically amplified bird calls, or baits to take migratory game birds, as prohibited by 50 CFR 20.21, revised June 14, 2001. This material is incorporated by reference in this Section, but does not include any later amendments or editions. A copy is available from any Department office, or it may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

An individual may use the following methods to take big game, subject to the restrictions in R12-4-318.

- 1. To take antelope:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and

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- h. For individuals holding a crossbow permit issued under R12-4-216, crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
2. To take bear:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. For individuals holding a crossbow permit issued under R12-4-216, crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges; and
  - i. ~~Substances placed in a manner intended to attract bears are lawful only during seasons established under R12-4-348 Pursuit with dogs between August 1 and December 31.~~
3. To take bighorn sheep:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. For individuals holding a crossbow permit issued under R12-4-216, crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
4. To take buffalo:
  - a. At the House Rock Wildlife Area:
    - i. Centerfire rifles;
    - ii. Muzzleloading rifles;
    - iii. All other rifles using black powder or synthetic black powder;
    - iv. Centerfire handguns no less than .41 Magnum or centerfire handguns with an overall cartridge length of no less than two inches;
    - v. Bows with a standard pull of 50 or more pounds, using arrows with broadheads of no less than 7/8 inch in width with metal cutting edges; and
    - vi. For individuals holding a crossbow permit issued under R12-4-216, crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
  - b. At the Raymond Ranch Wildlife Area:
    - i. Centerfire rifles;
    - ii. Muzzleloading rifles; and
    - iii. All other rifles using black powder or synthetic black powder.
5. To take deer:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
6. To take elk:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;

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- c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. For individuals holding a crossbow permit issued under R12-4-216, crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
7. To take javelina:
- a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges;
  - i. .22 rimfire magnum rifles; and
  - j. 5 mm rimfire magnum rifles.
8. To take mountain lion:
- a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. ~~For individuals holding a crossbow permit issued under R12-4-216, crossbows~~ Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges; and
  - i. Pursuit with dogs.
9. To take turkey:
- a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows with a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges;
  - i. .22 rimfire magnum rifles;
  - j. 5 mm rimfire magnum rifles; ~~and~~
  - k. .17 rimfire magnum rifles; and
  - ~~l.~~ Shotguns shooting shot.
- B. An individual may use the following methods to take small game, subject to the restrictions in R12-4-318.
1. To take cottontail rabbits and tree squirrels:
- a. Firearms not prohibited in R12-4-303,
  - b. Bow and arrow,
  - c. Crossbow,
  - d. Pneumatic weapons,
  - e. Slingshots, and
  - f. Falconry.

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2. To take all upland game birds:
    - a. Bow and arrow,
    - b. Falconry,
    - c. Shotguns shooting shot,
    - d. Handguns shooting shot, and
    - e. Crossbow.
  3. To take migratory game birds:
    - a. Bow and arrow;
    - b. Crossbow;
    - c. Falconry;
    - d. Shotguns shooting shot, except that lead shot shall not be used or possessed while taking individuals in areas designated by Commission order as "nontoxic shot zones" shall not use or possess lead shot while taking ducks, geese, swans, mergansers, common moorhens, or coots; and
    - e. Shotguns shooting shot and incapable of holding more than two shells in the magazine, unless plugged with a one-piece filler that cannot be removed without disassembling the gun that limits the magazine capacity to two shells.
- C. An individual may take waterfowl from a watercraft except a sinkbox, under the following conditions:
1. The motor, if any, is shut off, the sail, if any, is furled, and any progress from a motor or sail has ceased;
  2. The watercraft may be drifting as a result of current or wind action; may be beached, moored, or resting at anchor; or may be propelled by paddle, oars, or pole; and
  3. ~~An~~ The individual may use ~~a~~ the watercraft under power to retrieve dead or crippled waterfowl, but no shooting is permitted while the watercraft is underway.
- D. An individual may take predatory and furbearing animals by using the following methods, subject to the restrictions in R12-4-318: ~~An individual may use artificial light while taking raccoon but shall not attach lights to or operate lights from a motor vehicle, including powerboats.:~~
1. Firearms not prohibited in R12-4-303;:
  2. Bow and arrow;:
  3. Crossbow;:
  4. Traps not prohibited by R12-4-307;: and
  5. Artificial light while taking raccoon, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.
- E. An individual may take nongame mammals and birds by any method not except foot hold steel traps or methods prohibited in R12-4-303 or R12-4-318. An individual may use artificial light while taking nongame mammals and nongame birds but shall not use firearms at night, and shall not attach lights to or operate moveable lights from a motor vehicle, including powerboats., under the following conditions. An individual:
1. Shall not take nongame mammals and birds using foothold steel traps;
  2. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
  3. Shall not use firearms at night; and
  4. May use artificial light while taking nongame mammals and birds, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.
- F. An individual may take reptiles, ~~except soft shell turtles,~~ by any method not prohibited in R12-4-303 or R12-4-318: ~~An individual may use artificial light while taking reptiles but shall not use firearms at night, and shall not attach lights to or operate lights from a motor vehicle, including powerboats. under the following conditions. An individual:~~
1. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
  2. Shall not use firearms at night; and
  3. May use artificial light while taking reptiles, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

**R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of ~~Wild Mammals, Birds, and Reptiles~~ Wildlife**

- A. For the purposes of this Section, "evidence of legality" means ~~that wildlife is identifiable as to species and legality, and that the wildlife is accompanied by any appropriate license, tag, stamp, or permit required by law.:~~
1. The wildlife is identifiable as the "legal wildlife" prescribed by Commission order, which may include evidence of species, gender, antler or horn growth, maturity and size; and
  2. The wildlife is accompanied by the applicable license, tag, stamp or permit required by law.

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- B.** A person shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wild mammal, bird, or reptile the person possesses or transports, until arrival at the person's permanent abode or commercial processing plant for processing or the place where the wildlife is to be consumed. A person possessing or transporting the following shall also ensure that:
1. ~~Big game and sandhill cranes each have the required hunt permit tag or nonpermit tag attached as prescribed in R12-4-302.~~
  2. ~~Migratory game birds, except sandhill cranes, each have 1 fully feathered wing attached.~~
  3. ~~Each sandhill crane has either the fully feathered head or 1 fully feathered wing attached.~~
  4. ~~Each quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, if the current Commission order has established separate bag or possession limits for any species of quail.~~
- B.** An individual shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wild mammal, bird, or reptile that the individual possesses or transports, until arrival at the individual's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.
- C.** In addition to the requirement in subsection (B), an individual possessing or transporting the following wildlife shall also ensure that:
1. Big game, sandhill cranes, and pheasant each have the required valid tag attached as prescribed in R12-4-302;
  2. Migratory game birds, except sandhill cranes, each have one fully feathered wing attached;
  3. Each sandhill crane has either the fully feathered head or one fully feathered wing attached; and
  4. Each quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, if the current Commission order has established separate bag or possession limits for any species of quail.
- ~~C.D.~~** An individual who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission, such as a big game animal, sandhill crane, or pheasant, may authorize its transportation or shipment by completing and signing the Transportation/Shipping Permit portion of the valid tag valid for that animal. A separate Transportation/Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372, an individual may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation/Shipping Permit issued by the Department. The ~~person~~ individual shall provide the following information on the permit form:
1. Number and description of the wildlife to be transported or shipped;
  2. Name of ~~person~~ the individual who took the wildlife and that ~~person's~~ individual's address, license number, license class, and tag number;
  3. Address of destination where the wildlife is to be transported or shipped; and
  4. Name and address of transporter or shipper.
- ~~D.E.~~** An individual shall not possess the horns of a bighorn sheep, taken by a hunter in ~~Arizona~~ this state, unless the horns are marked or sealed as prescribed in R12-4-308.
- ~~E.F.~~** A person selling, offering for sale, or exporting An individual who sells, offers for sale, or exports the raw pelt of a bobcat taken in ~~Arizona~~ this state shall obtain a bobcat permit tag pursuant to R12-4-307 available for a fee as provided in R12-4-102 at Department offices and other locations at those times and places as determined and published by the Department, and shall ensure that the bobcat permit tag is locked through the mouth or eye openings so that it cannot be removed.
- ~~F.G.~~** An individual may import into this state carcasses or parts of carcasses of ~~wild mammals, birds, and reptiles~~ wildlife that have been lawfully taken in another state or country ~~when if~~ accompanied by ~~license, tag or permit~~ evidence of legality required from that state or country.
- ~~G.H.~~** Persons Individuals who obtain buffalo meat under R12-4-306 may sell the meat.
- ~~H.I.~~** This Section is effective April 1, 1997 An individual may import into this state the carcasses or parts of aquatic wildlife that have been lawfully taken in another state or country if accompanied by evidence of legality, and if transported and exported in accordance with the laws of the state or country of origin.
- J.** An individual in possession of or transporting the carcasses of any freshwater fish that have been taken within this state shall ensure that the head, tail, or skin is attached so that the species can be identified, numbers counted, and any required length determined.
- K.** An individual in possession of a carp (*Cyprinus carpio*) or buffalofish (*Ictiobus spp.*) carcass taken under Commission order may sell the carcass.

**R12-4-306. Buffalo ~~hunt regulations~~ Hunt Requirements**

- A.** When authorized by Commission order, the Department shall conduct a hunt to harvest buffalo from the state's buffalo herds.
- B.** Hunters with buffalo tags for House Rock Ranch shall attend a pre-hunt orientation to be held at the ranch headquarters on the evening before the opening day of the hunt. All hunters at House Rock Ranch shall personally sign in at the ranch headquarters before hunting and shall personally sign out after hunting
- B.** An unsuccessful hunter with a buffalo hunt permit-tag for the House Rock Wildlife Area herd shall check out in person or by telephone at either the Department's Flagstaff regional office or the House Rock Wildlife Area headquarters within three days following the close of the season. A successful buffalo hunter shall report information about the kill to the

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Department within five business days after taking the buffalo either in person at the House Rock Wildlife Area headquarters or in person or by telephone at the Department's Flagstaff regional office. If the kill is reported by telephone, the report shall include the name of the hunter, the hunter's tag number, the sex of the buffalo taken, the number of days hunted, and a telephone number where the hunter can be reached for additional information.

- C. ~~Hunters~~ A hunter with a buffalo hunt permit-tag at for the Raymond Ranch Wildlife Area herd shall be accompanied by a Department employee hunt in the order scheduled by the Department.
- D. ~~Each person receiving~~ A hunter with a buffalo hunt permit-tag for the Raymond Wildlife Area herd shall hunt in the order scheduled by the Department be accompanied by an authorized Department employee who shall designate the animal to be harvested. The hunter shall shoot only the legal buffalo designated by his or her permit.

**R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts**

- A. For the purposes of this Section, the following definitions apply:
  - 1. "Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.
  - 2. "Confinement trap" means a device designed to capture wildlife alive and hold it without harm.
  - 3. "Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.
  - 4. "Land set" means any trap used on land rather than in water.
  - 5. "Leghold trap" means a device designed to capture an animal by the leg or foot.
  - 6. "Paste-type bait" means a partially liquefied substance intended for use as a lure for animals.
  - 7. "Sight-exposed bait" means a carcass or parts of a carcass lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include dried or bleached bones with no attached tissue or less than two ounces of paste-type baits or trap flags.
  - 8. "Trap flag" means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.
  - 9. "Water set" means any trap used and anchored in water rather than on land.
- B. A valid trapping license is required for an individual 14 years of age or older for trapping predatory and fur-bearing animals. An individual born on or after January 1, 1967 shall successfully complete a Department-approved trapping education course to obtain a trapping license. Traps may be used to take predatory and fur-bearing animals only during the trapping season established by Commission order.
- C. All trappers shall inspect their traps daily and kill or release all predatory and fur-bearing animals. All trappers shall release without additional injury all animals that cannot lawfully be taken by trap. While in the field, all trappers shall possess a device that is designed or manufactured to restrain trapped animals so that a trapped animal can be removed from a trap when its release is required by this ~~rule~~ Section. All trappers, in units designated by Commission ~~Order~~ order as javelina hunt units, shall possess a choke restraint device ~~sufficient that enables the trapper~~ sufficient that enables the trapper to release a javelina from a trap.
- D. ~~It is unlawful for any individual to~~ An individual shall not:
  - 1. Set a trap within 1/2 mile of any of the following areas developed for public use: a boat launching area, picnic area, camping area, or roadside rest area;
  - 2. Set a trap, other than a confinement trap, within 1/2 mile of any occupied residence or building without permission of the owner or resident;
  - 3. Set a trap, other than a confinement trap, within 100 yards of an interstate highway or any other highway maintained by the Arizona Department of Transportation, within 25 yards of any other road as defined by A.R.S. § 17-101, or within 50 feet of any trail maintained for public use by a government agency;
  - 4. Set a leghold trap within 30 feet of a sight-exposed bait;
  - 5. Bait a confinement trap with live animals or portions of game mammals, big game, small game, upland game birds, migratory game birds, or game fish, or use bait with a confinement trap that is not wholly contained within the confinement trap;
  - 6. Use any trap with teeth;
  - 7. Use any snare;
  - 8. Use any trap with an open jaw spread ~~exceeding that exceeds~~ 6 1/2 inches for any land set;
  - 9. Use a body-gripping or other instant kill trap with an open jaw spread ~~exceeding that exceeds~~ 5 inches for any land set;
  - 10. Use a leghold trap with an open jaw spread ~~exceeding that exceeds~~ 7 1/2 inches for any water set; or
  - 11. Use a body-gripping or other instant kill trap with an open jaw spread ~~exceeding that exceeds~~ 10 inches for any water set.
- E. An individual who uses a leghold trap to take wildlife with a land set shall use: ~~a commercially manufactured padded or rubber-jawed trap, or an unpadded trap with jaws permanently offset to a minimum of 3/16 inch.~~
  - 1. ~~An anchor chain shall be attached to the trap frame within 1/2 inch of the center of the trap.~~
  - 2. ~~An anchor chain longer than 12 inches shall be equipped with a swivel at each end and at least one swivel positioned near the middle of the anchor chain; an anchor chain 12 inches or shorter shall contain at least two swivels, one at each end.~~

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3. ~~The anchor chain shall be equipped with a shock-absorbing spring requiring less than 40 pounds of force to extend or open the spring.~~
  4. ~~The trap shall be used with a device to allow for pan tension adjustment.~~
  1. A commercially-manufactured, padded, or rubber-jawed trap, or an unpadded trap with jaws permanently offset to a minimum of 3/16 inch and a device to allow for pan tension adjustment;
  2. A commercially-manufactured jawed trap that does not exceed 5 1/2 inches, modified with a pan safety device that prevents capture of non-targeted wildlife or domestic animals and a separate device that allows for pan tension adjustment; or
  3. A commercially manufactured leghold trap that captures wildlife by means of an enclosed bar or spring designed to prevent capture of non-targeted wildlife or domestic animals.
- F.** An individual who uses a leghold trap to take wildlife with a land set shall ensure that the trap has an anchor chain with at least two swivels. Anchor chains that are 12 inches or less in length shall have a swivel attached at each end. Anchor chains that are greater than 12 inches shall have one swivel attached at the trap and one swivel attached within 12 inches of the trap. The anchor chain shall be equipped with a shock-absorbing spring that requires less than 40 pounds of force to extend or open the spring.
- F.G.** Every licensed trapper shall file a complete written report as required by A.R.S. § 17-361(D) with the Phoenix Office of the Department by April 1 of each year on a form available from any Department office. ~~A~~ The trapper shall file the report is required even though if no trapping is done.
- G.H.** Persons suffering ~~from~~ property loss or damage due to wildlife and who take responsive measures as permitted under A.R.S. §§ 17-239 and 17-302 are exempt from this ~~rule~~ Section. Exemption under this ~~rule~~ Section does not authorize any form of trapping prohibited by A.R.S. § 17-301.
- H.I.** All trappers shall ensure that their traps are plainly identified with the name and address or registered number of the owner as prescribed by A.R.S. § 17-361(B). All trappers shall ensure that each of their traps has the name and address or registered number of the owner legibly marked on a metal tag attached to the trap. ~~A~~ The number assigned by the Department is the only acceptable registered number. For the purpose of this Section, “owner” means the person placing, setting, or using the trap.
- I.J.** An individual ~~applying who applies~~ for a trapping license shall provide the following information on a form available from any Department office:
1. Full name, address, and telephone number;
  2. Date of birth and physical description;
  3. An identification number assigned by the Department;
  4. Category of license: resident, nonresident, or juvenile; and
  5. The signature of the applicant.
- J.K.** The Department shall issue ~~a trapper~~ a registered number to a trapper and enter the number on the trapping license at the time ~~of the purchase the trapper purchases the license~~. A trapper under the age of 14 ~~who~~ is not required to purchase a trapping license, but shall obtain a registration number from any Department office before taking ~~any~~ wildlife with a trap. A trapper’s registration number is not transferable.
- K.L.** ~~The~~ All trappers shall ensure that the unskinned carcass of any a bobcat that they have trapped in Arizona this state or the pelt of any bobcat that they have trapped in Arizona this state shall have has a validated bobcat transportation tag attached to the carcass or pelt, except for a pelt tagged for sale and ~~exportation~~ export under subsection ~~(L)~~(M).
1. ~~The Trappers shall provide the~~ following information ~~shall be provided~~ on the bobcat transportation tag: current trapping license number, game management unit where the bobcat was taken, sex of the bobcat, and method by which the bobcat was taken. ~~Bobcat The Department shall provide~~ transportation tags ~~shall be provided by the Department~~ with each trapping license. A licensed trapper may obtain additional transportation tags from any Department office at no charge.
  2. ~~Bobcat Trappers shall validate~~ transportation tags ~~shall be validated by the trapper~~ immediately upon taking the bobcat by legibly and completely filling in all information required on the tag.
- L.M.** ~~Raw~~ Trappers shall ensure that pelts of bobcats that they have taken in Arizona this state that are sold, offered for sale, or exported from the state shall have bobcat permit tags (export tags) locked through the mouth and an eye opening, or through both eye openings so that the permit tag cannot be removed without being damaged. ~~Bobcat Trappers may obtain~~ bobcat permit tags may be obtained as follows:
1. Bobcat permit tags are available for a fee as provided in R12-4-102 at Department offices and other locations at those times and places as determined and published by the Department.
  2. When available, bobcat permit tags are issued on a first-come, first-served basis from November 1 through April 10 of each year.
  3. Department personnel or authorized agents of the Department shall attach and lock bobcat permit tags only to those pelts presented with validated transportation tags. ~~Transportation tags shall be collected by the individual issuing~~ Department personnel or authorized agents of the Department shall collect the transportation tags before attaching the bobcat permit tags.

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4. The April 10 deadline is waived for pelts consigned to licensed taxidermists for tanning or mounting.
5. ~~The Department representative personnel shall attach bobcat permit tags to bobcat pelts seized under the provisions of A.R.S. § 17-211(D)(4) before disposal by the Department. The April 10 deadline is waived for pelts tagged under this subsection.~~

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

- A.** ~~The Department may has the authority to establish mandatory wildlife check stations to gather biological information and to enforce wildlife laws. The Department shall publish the location, check-in requirements, and ~~check-out~~ check-out requirements for a season with the published Commission order establishing the season.~~
- ~~1. The Department shall ensure that wildlife check stations are located in or near hunting areas.~~
  - ~~2.1. Hunters shall personally check in at a wildlife check station before hunting in a season with a published check-in requirement.~~
  - ~~3.2. The Department shall ensure that wildlife check stations with a published check-in requirement are open continuously from 8:00 a.m. the day before the season until 8:00 p.m. the first day of the season, and from 8:00 a.m. to 8:00 p.m. during each day of the season.~~
  - ~~4.3. Hunters shall personally check out after hunting in a season with a published ~~check-out~~ check-out requirement, and shall present for inspection any wildlife taken; and display any license, tag, or permit required for taking or transporting wildlife.~~
  - ~~5.4. The Department shall ensure that wildlife check stations with a published check-out requirement are open continuously from 8:00 a.m. to 8:00 p.m. during each day of the season and shall remain open until 12:00 noon on the day following the close of the season.~~
- B.** ~~The Director or Director's designee may establish vehicle roadblocks at specific locations when necessary. Vehicle roadblocks are not the same as wildlife check stations. Officers at vehicle roadblocks shall direct all vehicles at a roadblock to slow or stop. Any occupant of a vehicle at a roadblock shall present for inspection upon request all wildlife in possession, and display any license, tag, stamp, or permit required for taking or transporting wildlife. The Department shall ensure that:~~
- ~~1. The administration and operation of vehicle roadblocks are calculated to cause the least intrusion upon the public's freedom;~~
  - ~~2. There is empirical data establishing the purpose and placement of roadblocks at given locations;~~
  - ~~3. Roadblocks are for a specified limited duration;~~
  - ~~4. There is general public notification of the roadblocks and that motorists at roadblocks are informed of the purpose of the roadblock;~~
  - ~~5. There are warnings and signals, illuminated at night, set up to put motorists on notice of approaching a roadblock; and~~
  - ~~6. There are explicit written limitations on the officer's conduct at roadblocks.~~
- B.** The Department has the authority to conduct inspections for bighorn sheep, archery deer, bear, mountain lion and special big game license-tags (deer, elk, antelope, and buffalo) at the Department's Phoenix and regional offices or designated locations. Regional offices are open 8:00 a.m. to 5:00 p.m., Monday through Friday, except on legal state holidays.
1. All bighorn sheep hunters shall personally check out within three days after the close of the season. Each hunter who takes a bighorn sheep shall submit the intact horns and skull for inspection and photographing. The Department representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken under Commission order. The hunter shall not remove, alter, or obliterate the mark or seal.
  2. All special big game license-tag hunters who tag a deer, elk, antelope, or buffalo shall submit the intact horns or antlers and skull or skullcap for inspection and photographing within three days after the close of the season.
  3. A successful non-permit tag archery deer hunter shall report information about the kill to a Department office in person or by telephone within 10 days of taking the deer if the hunt area does not have a check station requirement.
  4. A successful bear hunter shall report information about the kill in person or by telephone within 48 hours of taking a bear. If the kill is reported by telephone, the report shall include the name of the hunter, the hunter's hunting license number, the sex of the bear taken, the management unit where the bear was taken, and a telephone number where the hunter can be reached for additional information. In addition, the hunter shall provide a tooth from the bear to the Phoenix office within 20 days after contacting the Department.
  5. A successful mountain lion hunter shall report information about the kill in person or by telephone within 10 days of taking the mountain lion. In addition, the hunter shall provide a tooth from the mountain lion to the Phoenix office within 20 days after contacting the Department.
- C.** ~~The Department shall conduct bighorn sheep, bear, and mountain lion inspections at the Department's Phoenix and regional offices. These offices are open 8:00 a.m. to 5:00 p.m., Monday through Friday, except on legal state holidays.~~
- ~~1. All bighorn sheep hunters shall personally check out within three days following the close of the season. Each hunter who takes a bighorn sheep shall submit the intact horns and skull for inspection and photographing. The Department representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken pursuant to Commission order. The mark or seal shall not be removed, altered, or obliterated.~~

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2. ~~A successful bear hunter shall report information about the kill to a Department office in person or by telephone within 48 hours of taking a bear. If the kill is reported by telephone, the report shall include the name of the hunter, the hunter's hunting license number, the sex of the bear taken, the management unit where the bear was taken, and a telephone number at which the hunter can be reached to obtain additional information. In addition, the hunter shall provide a tooth from the bear to the Phoenix office within 20 days after contacting the Department.~~
3. ~~A successful mountain lion hunter shall report information about the kill to a Department office in person or by telephone within 10 days of taking the mountain lion.~~

**C.** The Director or Director's designee may establish vehicle roadblocks at specific locations when necessary to ensure compliance with applicable wildlife laws. Any occupant of a vehicle at a roadblock shall, upon request, present for inspection all wildlife in possession, and produce and display any license, tag, stamp, or permit required for taking or transporting wildlife.

**D.** This Section ~~shall~~ does not limit the game ranger ~~and or~~ and wildlife manager's authority to conduct stops, searches, and inspections ~~pursuant to~~ under A.R.S. §§ 17-211(D) and 17-331, or to establish voluntary wildlife survey stations to gather biological information.

**R12-4-310. Fishing Permits**

**A.** The Department may issue a Fishing Permit to state, county, or municipal agencies or departments and to nonprofit organizations licensed by or contracted ~~to~~ with the Department of Economic Security or Department of Health Services, whose primary purpose is to provide physical or mental rehabilitation or training for ~~persons~~ individuals with physical, developmental, or mental disabilities. The permit will allow ~~persons~~ individuals with physical, developmental, or mental disabilities to fish without a fishing license. The permit will authorize this activity for up to 20 ~~persons~~ individuals for the two days specified on the permit upon any public waters except that fishing in the waters of the Colorado River is restricted to fishing from the Arizona shoreline only, unless the persons fishing under the authority of the permit also possess a valid Colorado River stamp from the adjacent state. The ~~persons~~ individuals fishing under the authority of the permit shall comply with other statutes, Commission orders, and rules not contained in this Section.

**B.** An applicant for a Fishing Permit shall provide the following to the Department:

1. A completed application form obtained from the Department; ~~containing that contains:~~

- a. The name, address, and telephone number of the agency, department, or nonprofit organization requesting the permit;
- b. The name, position title, and telephone number of the ~~person~~ individual who will be responsible for supervising the ~~persons~~ individuals who will be fishing under the authority of the permit;
- c. The total number of ~~persons~~ individuals who will be fishing under the authority of the permit;
- d. The dates of the two days for which the permit will be valid; and
- e. The location for which the permit will be valid.

2. Nonprofit organizations shall also submit documentation that they are licensed by or ~~contracted to~~ have a contract with the Department of Economic Security or the Department of Health Services for the purpose of providing rehabilitation or treatment services to individuals ~~and or~~ groups ~~possessing with~~ with physical, developmental, or mental disabilities.

**C.** The Department shall issue or deny the ~~approved~~ Fishing Permit to ~~the~~ an applicant within 30 calendar days of receiving an application ~~meeting the criteria of this Section.~~

**D.** The Fishing Permit permittee shall provide one hour of instruction on fish identification, fishing ethics, safety, and techniques to the ~~persons~~ individuals who will be fishing under authority of the permit. The Department shall provide the lesson plan for this instruction ~~will be provided to the permittee by the Department.~~

**E.** Each ~~person~~ individual fishing without a license under the authority of the Fishing Permit may take only 1/2 the regular bag limit established by Commission order for any species, unless the regular bag limit is ~~+~~ one, in which case the permit authorizes the regular limit.

**F.** The permittee shall submit a report to the Department not later than 30 days after the end of the authorized fishing dates. The Department may deny issuance of future Fishing Permits to permittees ~~failing who fail~~ who fail to submit the report. The permittee shall report on a form available from the Department:

1. The Fishing Permit number and the information contained in the permit;
2. The total number of ~~persons~~ individuals who fished and total hours fished;
3. The total number of fish caught, kept, and released, by species.

**R12-4-311. Exemptions from ~~requirement to possess an Arizona fishing license while taking aquatic wildlife~~ Requirement to Possess an Arizona Fishing License while Taking Aquatic Wildlife**

**A.** A fishing license is not required to take aquatic wildlife from private waters ~~which that~~ which are not open to the public and ~~which are~~ not managed by the Department.

**B.** An individual may ~~fishing license is not required to~~ take terrestrial mollusks or crustaceans from private property without a fishing license.

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- C. Any ~~person~~ individual fishing in Arizona on the designated Saturday during ~~the week proclaimed by the President of the United States as National Fishing and Boating Week~~ may fish without an Arizona fishing license, ~~provided their~~ if the individual's privilege to take aquatic wildlife has not been revoked by the Commission. ~~The rule applies provisions of this subsection apply to all waters except the Colorado River adjacent to California and Nevada, where fishing without a license is limited to the shoreline, unless the state with concurrent jurisdiction removes licensing requirements on the same day. The provisions of this subsection do not apply to Reservation lands except as authorized by tribal governments.~~
- D. Persons ~~An individual~~ participating in an introductory fishing clinic organized, sanctioned, and sponsored by the Department may fish without a fishing license while ~~accompanied by~~ an authorized Department instructor is present.

**R12-4-312. ~~Special use permits and stamps for fishing on waters with shared jurisdiction~~ Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction**

- A. Any ~~person~~ individual fishing from a ~~boat~~ watercraft or other floating device or object on the waters of Lake Mead, Lake Mohave, or that portion of the Colorado River forming that forms the mutual boundary between Arizona and Nevada, shall have in possession ~~one of the following~~:
  - 1. A valid ~~Nevada~~ Arizona-Colorado River special use stamp affixed to a valid Arizona fishing license, or
  - 2. A valid ~~Arizona~~ Nevada-Colorado River special use stamp affixed to a valid Nevada fishing license.
- B. Any ~~person~~ individual fishing from the Arizona shorelines of the waters named in subsection (A), unless exempted by R12-4-310 or R12-4-311, shall have in possession either:
  - 1. A valid Arizona fishing license, unless exempted pursuant to under A.R.S. § 17-335; or
  - 2. A valid ~~Arizona~~ Nevada-Colorado River special use stamp affixed to a valid Nevada fishing license.
- C. Any ~~person~~ individual fishing in the waters of Mittry Lake or Topock Marsh, unless exempted by R12-4-310 or R12-4-311, shall have in possession either:
  - 1. A valid Arizona fishing license, unless exempted pursuant to under A.R.S. § 17-335; or
  - 2. A valid Arizona-Colorado River special use permit stamp affixed to a valid California fishing license.
- D. Any ~~person~~ individual fishing in the Arizona portion of Lake Powell, unless exempted by R12-4-310 or R12-4-311, shall have in possession either:
  - 1. A valid Arizona fishing license, unless exempted pursuant to under A.R.S. § 17-335; or
  - 2. A valid Arizona-Lake Powell stamp affixed to a valid Utah resident fishing license.
- E. The requirements of this ~~rule~~ Section are in addition to those contained in A.R.S. §§ 17-342, 17-343, and 17-344.

**R12-4-313. ~~Lawful Methods of Taking Aquatic Wildlife; Restrictions~~**

- A. ~~A person may take aquatic wildlife during the day or night and may use artificial light. An individual may take aquatic wildlife as defined in A.R.S. § 17-101, subject to the restrictions prescribed in R12-4-303, R12-4-317, and this Section. Aquatic wildlife may be taken during the day or night and may be taken using artificial light as prescribed in A.R.S. § 17-301.~~
  - B. ~~A person may take fish by the following methods:~~
    - 1. ~~All fish may be taken by angling as defined in A.R.S. § 17-101 or simultaneous fishing as defined in R12-4-101 with any bait, artificial lures, or flies, subject to the following restrictions:~~
      - a. ~~A person shall not use any species of fish as live bait, or possess any species of fish for use as live bait, at, in, or upon any waters unless that species is specified as a "live baitfish" for those waters by Commission order. Live baitfish shall not be transported from the waters where taken except as allowed in R12-4-316.~~
      - b. ~~The flesh of game fish, except sunfish of the genus Lepomis, shall not be used as bait.~~
      - c. ~~Waterdogs shall not be used as live bait in that portion of Santa Cruz County lying east and south of State Highway 82 or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.~~
      - d. ~~Fish may be taken by artificial lures and flies, as defined in R12-4-101, only in waters designated by Commission order as "artificial lures and flies only"; waters so designated may be further restricted to the use of barbless hooks, meaning any fishhook manufactured without barbs or on which barbs have been completely closed or filed off.~~
    - 2. ~~In addition to angling, the following fish may also be taken by the following methods:~~
      - a. ~~Carp (Cyprinus carpio), buffalofish, mullet, tilapia, and suckers, except razorbaek suckers (Xyrauchen texanus), may also be taken by bow and arrow, crossbow, snare, gig, spear, spear gun, or snagging. Snagging is only allowed in areas designated by Commission order. None of these methods shall be practiced within 200 yards of any boat dock or designated swimming area.~~
      - b. ~~Live baitfish may also be taken for personal use as bait by:~~
        - i. ~~A cast net not to exceed a radius of three feet measured from the horn to the headline;~~
        - ii. ~~A minnow trap, as defined in R12-4-101;~~
        - iii. ~~A seine net not to exceed 10 feet in length and four feet in width; or~~
        - iv. ~~A dip net.~~
- ~~Striped bass may also be taken by spear or spear gun, only in those waters designated by Commission order.~~

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- ~~C.~~ In those waters designated by Commission order, a person taking trout shall kill and retain the fish as part of the bag limit or immediately release the fish. Further fishing is prohibited after the legal bag limit of trout is killed.
- ~~D.~~ The Commission may, by order, designate a special season when fish may also be taken by hand, or by any hand-held, nonmotorized implement that does not discharge a projectile. The special season may apply to any waters where a fish die-off is imminent due to poor or low water conditions, or Department fish renovation procedures.
- ~~E.~~ A person may take waterdogs and other amphibians, soft-shelled turtles, mollusks, and crustaceans with a minnow trap, crayfish net, by angling, by hand, or with any hand-held, nonmotorized implement that does not discharge a projectile. Bullfrogs may also be taken by bow and arrow, crossbow, or slingshot.
- ~~F.~~ A person may take crayfish using:
  - 1. A trap not more than three feet in the greatest dimension. An unattended crayfish trap shall have an attached, water-resistant identification tag that bears the legible name, address, and fishing license number of the person using the trap. A crayfish trap shall be raised and emptied daily; or
  - 2. A seine net that is not larger than 10 feet in length and four feet in width.
- ~~G.~~ This rule is effective May 25, 2001.
- ~~B.~~ The Commission may, through Commission order, prescribe legal sizes for possession of aquatic wildlife.
- ~~C.~~ An individual may take aquatic wildlife by angling or simultaneous fishing as defined in R12-4-101 with any bait, artificial lure, or fly subject to the following restrictions. An individual:
  - 1. Shall not possess aquatic wildlife other than aquatic wildlife prescribed by Commission order;
  - 2. Shall not use the flesh of game fish, except sunfish of the genus *Lepomis*, as bait;
  - 3. May use live baitfish, as defined in R12-4-101, only in areas designated by Commission order; and
  - 4. Shall not use waterdogs as live bait in that portion of Santa Cruz County lying east and south of State Highway 82 or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- ~~D.~~ In addition to angling, an individual may also take the following aquatic wildlife using the following methods, subject to the restrictions of R12-4-303, R12-4-317, and this Section:
  - 1. Carp (*Cyprinus carpio*), buffalofish, mullet, tilapia, goldfish, and shad may also be taken by bow and arrow, crossbow, snare, gig, spear, spear gun, or snagging. Except for snagging, an individual shall not practice any of these methods of take within 200 yards of any boat dock or designated swimming area.
  - 2. Striped bass may also be taken by spear or spear gun in waters designated by Commission order.
  - 3. Live baitfish may also be taken for personal use as bait by:
    - a. A cast net not to exceed a radius of four feet measured from the horn to the headline;
    - b. A minnow trap, as defined in R12-4-101;
    - c. A seine net not to exceed 10 feet in length and four feet in width; or
    - d. A dip net.
  - 4. Amphibians, soft-shelled turtles, mollusks, and crustaceans may also be taken by minnow trap, crayfish net, hand, or with any hand-held, non-motorized implement that does not discharge a projectile, unless otherwise permitted by this Section.
  - 5. In addition to the methods described in subsection (D)(4), bullfrogs may also be taken by bow and arrow, crossbow, or slingshot.
  - 6. In addition to the methods described in subsection (D)(4), crayfish may also be taken with the following devices:
    - a. A trap not more than three feet in the greatest dimension; or
    - b. A seine net not larger than ten feet in length and four feet in width.
- ~~E.~~ An individual who uses a crayfish and minnow trap shall attach a water-resistant identification tag to the trap if it is unattended. The tag shall include the legible name, address, and fishing license number of the individual using the trap. An individual using a crayfish and minnow trap shall raise and empty the trap daily.

~~R12-4-314. Possession, Sale, Transportation, and Importation of the Carcasses and Parts of Aquatic Wildlife Repealed~~

- ~~A.~~ The carcasses or parts of aquatic wildlife that have been lawfully taken in another state or country may be imported into Arizona when accompanied by any license or permit required by the state or country of jurisdiction, and where transported and exported in accordance with the laws of the state or country of origin.
- ~~B.~~ The carcasses of all freshwater fish possessed or transported which have been taken within Arizona shall have the head or tail or skin attached so that the species can be identified, numbers counted, and any required length determined.
- ~~C.~~ The carcasses of carp (*Cyprinus carpio*) and buffalofish (*Ictiobus* spp.) taken pursuant to Commission order may be sold.
- ~~D.~~ This rule is effective January 1, 1993.

~~R12-4-315. Possession of live fish; unattended live boxes and stringers~~ **Live Fish; Unattended Live Boxes and Stringers**

- ~~A.~~ **Fish** An individual may possess fish taken pursuant to ~~alive under R12-4-313~~ **may be possessed alive** on the waters where taken, except when ~~the take or possession is~~ expressly prohibited by ~~the provisions within~~ of R12-4-313 ~~or R12-4-317~~, but ~~the individual shall not be transported~~ **transport the fish** alive from the waters where taken except as allowed in R12-4-316.

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- B. ~~All~~ An individual who places any unattended live boxes or stringers holding fish shall ~~have attached~~ attach water resistant identification legibly bearing the name, address, and fishing license number of ~~each person~~ the individual using and holding fish in ~~such~~ the live box or stringer.

**R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs**

- A. ~~A person~~ An individual may possess live baitfish, crayfish, or waterdogs for use as live bait only in accordance with this Section ~~and R12-4-313 and R12-4-317.~~
- B. ~~A person~~ An individual may possess or transport the following live baitfish for personal use as live bait in accordance with R12-4-317. ~~A person possessing~~ An individual who possesses a valid Arizona fishing license may import these live baitfish from California ~~and or~~ Nevada without accompanying documentation certifying the fish are free of disease, or may import these live baitfish from any other state with accompanying documentation certifying that the fish are free of Furunculosis.
1. Fathead minnow (*Pimephales promelas*);
  2. Mosquitofish (*Gambusia affinis*);
  3. Red shiner (~~*Notropis*~~ *Cyprinella lutrensis*);
  4. Threadfin shad (*Dorosoma petenense*);
  5. Golden shiners (*Notemigonus crysoleucas*); and
  6. Goldfish (*Carassius auratus*).
- C. ~~A person possessing~~ An individual who possesses a valid Arizona fishing license may import, transport, or possess live waterdogs for personal use as bait, except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- D. ~~A person~~ An individual shall not import, transport, move between waters, or possess live crayfish for personal use as live bait except as allowed in 12 A.A.C. 4, Article 4, and except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.
- E. ~~A person~~ An individual may trap or capture live crayfish as provided in R12-4-313. A person may use live crayfish as bait only in the body of water where trapped or captured, not in an adjacent body of water, except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the Southern international boundary with Mexico.
- F. ~~A person~~ An individual shall not transport crayfish alive from the site where taken except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.
- ~~G. This rule is effective May 25, 2001.~~

**R12-4-317. ~~Repealed~~ Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles**

- A. Methods of lawfully taking aquatic wildlife during seasons designated by Commission order as “general” seasons are designated in R12-4-313.
- B. Other seasons designated by Commission order have specific requirements and lawful methods of take more restrictive than those for general seasons, as prescribed in this Section. While taking aquatic wildlife under R12-4-313:
1. An individual participating in an “artificial lures and flies only” season shall use only artificial lures and flies as defined in R12-4-101. The Commission may further restrict “artificial lures and flies only” season to the use of barbless or single barbless hooks. A barbless hook is any fishhook manufactured without barbs or on which barbs have been completely closed or removed.
  2. An individual participating in a “live baitfish” season shall not use any species of fish as live bait, or possess any species of fish for use as live bait at, in, or upon any waters unless that species is specified as a live baitfish for those waters by Commission order. Live baitfish shall not be transported from the waters where taken except as allowed in R12-4-316.
  3. An individual participating in an “immediate kill or release” season shall kill and retain the designated species as part of the bag limit or immediately release the wildlife. Further fishing is prohibited after the legal bag limit is killed.
  4. An individual participating in a “catch and immediate release” season shall immediately release the designated species.
  5. An individual participating in an “immediate kill” season shall immediately kill and retain the designated species as part of the bag limit.
  6. An individual participating in a “snagging” season shall use this method only at times and locations designated by Commission order.
  7. An individual participating in a “spear or spear gun” season shall use this method only at times and locations designated by Commission order.
- C. A “special” season may be designated by Commission order to allow fish to be taken by hand, or by any hand-held, non-motorized implement that does not discharge a projectile. The “special” season may apply to any waters where a fish die-off is imminent due either to poor or low water conditions or Department fish renovation activities, or as designated by Commission order.

**R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

- A. Methods of lawfully taking wild mammals and birds during seasons designated by Commission order as “general” seasons are designated in R12-4-304. Restrictions designated in subsection (C) do not apply to general seasons.
- B. Methods of lawfully taking big game during seasons designated by Commission order as “special” are designated in R12-4-304. “Special” seasons are open only to individuals ~~in possession of~~ who possess special big game ~~license tags~~ license tags issued ~~pursuant to~~ under A.R.S. § 17-346 and R12-4-120.
- C. ~~Other seasons~~ When designated by Commission order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as prescribed in this Section. While taking ~~wildlife~~ the species authorized by the season:
1. An individual participating in a “muzzleloader” season shall not use or possess any firearm other than a muzzle-loading ~~rifle~~ rifles or a muzzle-loading ~~handgun~~ handguns, as defined in R12-4-101.
  2. An individual participating in an “archery-only” season shall use and possess only a bow and arrow as prescribed in R12-4-304, and shall not use or possess any other ~~weapon~~ weapons, including a ~~crossbow~~ crossbows or any other ~~bow~~ bows ~~having devices attached to hold with a device that holds~~ the bow in a drawn position, except as authorized by R12-4-216.
  3. An individual participating in a “~~handguns~~ handgun, archery, and muzzleloader (HAM)” season may only use or possess any or all of the following: ~~a handgun (as prescribed in R12-4-304), muzzle-loading rifle (as defined in R12-4-101), crossbow (as prescribed in R12-4-304), and bow and arrow (as prescribed in R12-4-304)~~ handguns, muzzle-loading rifles as defined in R12-4-101, crossbows, and bows and arrows as prescribed in R12-4-304.
  4. ~~The use of dogs is prohibited during spring bear seasons~~ An individual who possesses a valid tag for a bear season between January 1 and July 31 shall not use dogs to take bear.
  5. ~~An individual participating in a “bear-baiting” season shall have in possession the required hunt permit tag and may use and possess any weapon lawful for taking bear as prescribed in R12-4-304, except that an individual participating in an “archery-only” season which runs concurrently with a “bear-baiting” season shall comply with subsection (C)(2) of this Section. An individual participating in “bear-baiting” season may use bait in taking bear, but shall:~~
    - a. ~~Ensure that bait is biodegradable animal or vegetable matter contained within a single metal container not exceeding 10 gallons in volume;~~
    - b. ~~Place no more than 5 bait containers, each clearly marked with the hunter’s hunt permit tag number;~~
    - e. ~~Establish bait locations on or after August 15;~~
    - d. ~~Remove bait containers and their contents when no longer in use, and no later than the day following the close of the season authorized for baiting.~~
  - 6.5. An individual participating in a “pursuit-only” season may use dogs to pursue bears, mountain lions, or raccoons as designated by Commission order, but shall not kill or capture the quarry. An individual participating in a “pursuit-only” season shall ~~have in possession~~ possess and, at the request of Department personnel, produce a valid hunting license and any required tag for taking the animal pursued, even though there shall be no kill.
  - 7.6. An individual participating in a “limited weapon” season may only use or possess the following methods or devices for taking wildlife, when prescribed in R12-4-304 as lawful for the species hunted: bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot-hold steel traps; nets; hand-propelled projectiles; or capture by hand.
  - 8.7. An individual participating in a “limited weapon-shotgun” season may only use or possess the following methods or devices for taking wildlife, when prescribed in R12-4-304 as lawful for the species hunted: shotgun shooting shot or slug; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot-hold steel traps; nets; hand-propelled projectiles; or capture by hand.
  - 9.8. An individual participating in a “limited weapon-shotgun shooting shot” season may only use or possess the following methods or devices for taking wildlife, when prescribed in R12-4-304 as lawful for the species hunted: shotgun shooting shot, bow and arrow, crossbow, pneumatic weapons, falconry, slingshots, any trap except foot-hold steel traps, nets, hand-propelled projectiles, or capture by hand.
  - 10.9. An individual participating in a “limited weapon-rimfire” season may only use or possess the following methods or devices for taking wildlife, when prescribed in R12-4-304 as lawful for the species hunted: rifled firearms using rim-fire cartridges; shotgun shooting shot or slug; bow and arrow; crossbow; pneumatic weapons; falconry; slingshots; any trap except foot-hold steel traps; nets; hand-propelled projectiles; or capture by hand.
  - 11.10. An individual participating in a “falconry-only” season shall be a falconer either licensed ~~pursuant to~~ under R12-4-422 or ~~exempted pursuant to~~ exempted under R12-4-407, and ~~shall~~ use no method of take except falconry.
  - 12.11. An individual may participate in a “juniors-only hunt” up to and throughout the calendar year of ~~their~~ the individual’s 17th birthday, provided ~~they meet~~ the individual meets the requirements of A.R.S. § 17-335.
  - 13.12. An individual participating in a “CHAMP” season shall be a challenged hunter access/mobility permittee ~~pursuant to~~ under R12-4-217.
  13. An individual participating in a “raptor capture” season shall be a licensed falconer under R12-4-422 or exempted under R12-4-407.

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~~D.~~ This rule is effective January 1, 2000.

**R12-4-319. Use of Aircraft to Take Wildlife**

A. For the purposes of this Section, the following definitions apply:

1. "Aircraft" means any contrivance used for flight in the air or any lighter-than-air contrivance.

2. "Harass" means to disturb, molest, chase, rally, concentrate, harry, drive, herd, or torment.

3. ~~2.~~ "Locate" means any act or activity directed at locating or finding wildlife in a hunt area that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.

B. ~~A person~~ An individual shall not take or assist in taking wildlife from or with the aid of aircraft.

~~C.~~ A person shall not harass wildlife or assist in harassing wildlife from or with the aid of an aircraft.

~~D.C.~~ A person shall not locate or assist in locating wildlife from or with the aid of an aircraft beginning 48 hours before and during all open big game seasons, except Commission-ordered special seasons and seasons for mountain lion. Except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, an individual shall not locate or assist in locating wildlife from or with the aid of an aircraft in a hunt unit with an open big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.

~~E.D.~~ A person possessing An individual who possesses a special big game license tag for a special season under R12-4-115 or R12-4-120 or a person an individual assisting who assists or will assist such a licensee shall not use an aircraft to locate wildlife beginning 48 hours before and during a Commission-ordered special season.

~~F.E.~~ This Section does not apply to any ~~person~~ individual acting within the scope of official duties as an employee or authorized agent of the state or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

**R12-4-320. Harassment of Wildlife**

A. In addition to the provisions of A.R.S. § 17-301, it is unlawful to harass, molest, chase, rally, concentrate, herd, intercept, torment, or drive wildlife with or from any aircraft as defined in R12-4-319, or with or from any motorized terrestrial or aquatic vehicle.

B. This Section does not apply to individuals acting:

1. Under the provisions of A.R.S. § 17-239; or

2. Within the scope of official duties as an employee or authorized agent of the state or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.