



Notices of Final Rulemaking

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

This rulemaking results primarily from the Arizona Department of Real Estate's ("Department") Five-year Rule Review of Articles 1, 3, 5, 10, 11 and 13 (Title 4, Chapter 28, A.A.C.) approved by the Governor's Regulatory Review Council (G.R.R.C.) on May 4, 2004. As a prelude to the Five-year Review, the Department encouraged regulated parties to participate in stakeholder committees and meetings held between June and November 2003. Additional changes to the rules are a result of staff comments and input. Some stakeholder groups continue to meet and discuss the regulation of real estate-related industries subject to Department jurisdiction under A.R.S. Title 32, Chapter 20, which may result in the adoption or amendment of rules in the future.

R4-28-101 is amended to define commonly used terms such as active license and non-resident, to remove terms no longer used, and to modify other terms.

Non-substantive changes are made to R4-28-102 to improve understanding. Procedures for applicants under license time-frames are clarified in R4-28-103.

Licensing fees authorized under A.R.S. § 32-2132 are exempt from the provisions of Title 41, Chapter 6 (including rulemaking), pursuant to A.R.S. § 41-1005 (A) (16). License fees currently included in R4-28-104 are repealed.

Table 1. The periods for review are adjusted to accommodate the continuing increase in volume of applications for the various types of licenses issued and limitations of available resources, and so that entity applications can be processed concurrently with their associated designated brokers. Periods for substantive review and applicants' response to the Department's request for additional information have been added for all license renewals because the Department determined they were necessary. In most cases, the administrative review period has been extended, but the substantive review period has been shortened, so that the overall time-frame remains the same or is increased just slightly. Because the time required for review of a distance learning course greatly exceeds the time required for review of a live-instruction class, the distinction is made and a longer time period is established for review of distance learning courses.

R4-28-301 is amended to clarify disclosure and documentation of background information required from licensees and license applicants, including disclosure and documentation of any payment made by a recovery fund or other fund of last resort as a result of actions by the licensee or applicant, or a civil judgment finding fraud or dishonest dealings. The changes to subsection (F) clarify the types of events that must be reported by licensees.

R4-28-302 is amended to eliminate the requirement that the statement from an entity's designated broker be notarized; to move (H) (1) and subsection (I) to R4-28-1103, Broker Supervision and Control, and amend them to accurately reflect the broker's statutory obligation of supervision; to repeal (H) (2), which had been repealed at R4-28-303 (E)(3); and to insert text from R4-28-1001, Fictitious Names, which is being repealed, as new text at subsections (H) and (I). Subsection (L) is changed to clarify that it applies to employing brokers and to brokers with a designated broker license status but does not apply to brokers with an associate broker license status.

Because R4-28-303 contains a lot of information, the Department considered splitting it into two Sections as suggested by G.R.R.C. staff, however that would require the Department to revise and reprint numerous forms to correct rule citations, and the Department determined that doing so would not be a good use of the limited resources available. The title of R4-28-303 has been amended to better reflect the contents of the Section, and the Section has been amended to require a designated broker to submit a Broker Supervision and Control Audit Declaration on behalf of the entity or sole proprietorship for which the broker is responsible as a condition of license renewal. Subsection (C), pertaining to unlicensed activity, is stricken and adopted as a new Section, R4-28-306. Subsections (E), (F) and (G) are revised and rewritten as subsections (D), (E), (F) and (G) for clarity based on comments received from stakeholders, staff, and G.R.R.C. staff. Subsection (F) is also amended to limit membership of a professional corporation or professional limited liability company that is licensed as a designated broker, as authorized by a 2004 amendment to A.R.S. § 32-2125 (B)[2004 Session Laws Chapter 11, 46th Legislature, 2nd Regular Session]. An additional legislative change to A.R.S. § 32-2101 (20) is planned for the upcoming legislative session to remove a conflict between the two statutes.

R4-28-304 and R4-28-305 are amended for clarity.

Education rule R4-28-402 is amended to add descriptions of course content for the Disclosure and Business Brokerage categories of real estate continuing education courses. Procedures to attain the Business Brokerage Specialist designation are adopted in a new Section, R4-28-405. Procedures for current licensees who meet specific criteria and seek to be "grandfathered" into the business brokerage specialist designation have been included. The Department has determined that additional work is needed to implement renewal of the designation, and a stakeholder committee will be organized to address this need.

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The advertising rules are amended for clarity based on suggestions from stakeholders. Changes to R4-28-502 clarify which parties are responsible for school advertising and require that real estate advertisements include the prominent display of the employing broker's name. Former subsection (K) is stricken as unnecessary. New subsection (F) requires that an agent who advertises another agent's listed property prominently display the listing agent's name in the ad. Subsection (L) is amended to address electronic solicitations for real estate brokerage services for property located in Arizona. A statutory cite in R4-28-503 is corrected.

Subsections (A) and (B) of R4-28-803 have been rewritten in active voice, and to clarify that prospective purchasers are entitled to an opportunity to read the public report for the development before signing a purchase contract, not merely receive a copy.

Stakeholders and the Department's Rulemaking Advisory Committee recommended minor changes to R4-28-1101 and R4-28-1103. Changes to R4-28-1101 clarify what disclosures must be made to a party to a transaction, clarify that a salesperson or broker is not deemed to jeopardize a transaction by refusing to modify terms of compensation or employment, improve understanding of the standard of care expected of salespersons and brokers, and clarify that licensees must respond to Department inquiries. R4-28-1103 is amended to include the relocated provisions of R4-28-302 (H)(1) and (I)(1) and (2) as new text.

Following the Auditor General's recommendation in its 2002 Sunset Review of the Department and based on current practice, R4-28-1303 is amended to ensure confidentiality of open investigations and audits, and availability of completed investigations or audits upon request, subject to the established record retention schedule and redaction of confidential information.

Non-substantive changes are made to R4-28-1310.

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

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

**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:**

**Persons Directly Affected By, Bear the Costs of, or Directly Benefit From the Proposed Rulemaking**

This rulemaking directly affects real estate, cemetery, and membership camping brokers and salespersons, and developers. Most of the changes in this rulemaking are non-substantive. No additional cost on regulated parties, the Department, or other persons is expected as a result of this rulemaking. Brokers, salespeople, and developers will, and homebuyers may, directly benefit from clearer rules. The rulemaking amends various rules due to legislative changes (2004 Session Laws, Chapter 100, 46th Legislature, 2nd Regular Session), and input from stakeholders to make licensees' obligations under the rules more clear, to repeal an Article that has been made redundant, to comport with current practice, and to clarify the meaning of rules as identified in the Department's 5-Year Rule Review approved by G.R.R.C. May 4, 2004.

It is beneficial for licensees and license applicants to have clear and understandable rules, and consumers in real estate transactions that involve real estate agents and/or developers will ultimately benefit. Home sellers, buyers, lessors and lessees will be affected indirectly when they conduct business with regulated parties who understand what is required of them.

**Cost/Benefit Analysis**

**Probable costs and benefits to the Department and other Agencies directly affected by the proposed rulemaking:**

The goal for all of these changes is to achieve greater understanding. Because regulated parties will better understand the rules, they may find it easier to comply, and the Department will experience improved regulation and enforcement of the rules. As of October 31, 2004, the Department regulates:

Entity Brokers (Corporations, Limited Liability Companies, and Partnerships)	4,061
Brokers (including Self-Employed)	12,647
Salespersons	<u>54,135</u>
<b>TOTAL</b>	<b>70,843</b>

Despite the increasing number of license applications, shown in the table below, the Department's staffing levels have actually been cut 15%. In 1999 the Department was funded for 67 Full-Time Employees (FTEs), which has been reduced to 57 FTEs in 2004.

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<u>Type of Applic.</u>	<u>FY1999</u>	<u>FY2000</u>	<u>FY2001</u>	<u>FY2002</u>	<u>FY2003</u>	<u>FY2004</u>
Salesperson	4,680	4,779	4,709	6,157	7,351	8,885
Broker	551	637	569	580	581	642

During FY 2004, the Department exceeded time-frames and refunded fees on 23 applications, totaling \$675, and paid \$7.50 in penalties. This trend is expected to continue as the number of applicants and licensees continue to increase.

The Department's budget appropriation has remained virtually static over this same time period. In 1999, the Department's budget appropriation was \$3,074,600. In 2004, the appropriation was \$3,113,700, an increase of 1.27%. This allows no adjustment for increases in the cost of living or to address the increased workload due to the increasing number of licensees regulated. The number of investigations has increased from 390 in Fiscal Year 1999 to 1,000 in 2004, and figures for formal administrative and disciplinary action have also risen proportionately.

**Probable costs and benefits to a political subdivision of Arizona directly affected by the proposed rulemaking:**

None

**Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:**

Most of the changes in this rulemaking are non-substantive and do not impose additional costs or benefits on businesses.

Applicants and licensees may experience a slight increase in the time required for the Department to process some application types based on the adjustment to some of the license time-frames. Brokers whose licenses are designated broker status (DB) will be directly affected by the change to the license time-frame, but because the DB is inextricably tied to the employing broker (the business entity), the applications need to be processed concurrently. Processing an application for a broker to be an entity's designated broker in a different amount of time than the time established for processing the license for the entity for which the broker will be responsible serves no purpose, since neither can be "active" without the other. The same is often true for branch office licenses, for which the time-frame is extended to correspond with the entity's application.

Applicants will better understand what is required for licensure; licensees will better understand what is required for license renewal, in advertising, and the standards for determining professional conduct. They will understand what disclosures must be made, when, and what supporting documentation they must submit.

Brokers and salespersons that specialize in the brokering of businesses and wish to obtain the newly-authorized Business Broker ("BB") specialty designation will know what is required to attain and retain the designation. No new fees are required for the designation, only the cost of taking the prerequisite courses and examinations.

Brokerages that specialize in buying and selling businesses have the opportunity to benefit from the creation in statute of a business broker specialty designation (§§ 32-2124 and 32-2130, as amended). The voluntary designation requires additional education and examinations, but no fee is required. If the licensee determines that the cachet (and anticipated increase of business) of having the voluntary designation does not favorably offset the cost of the additional classes required, the salesperson or broker is under no obligation to renew the designation. The designation has provided an additional revenue stream for schools.

Consumers seeking to market or acquire a business will be able to readily identify licensees who have met the additional requirements and demonstrated their knowledge of the acquisition, sale or lease of businesses. The additional education will lead to more knowledgeable licensees, the licensees will do a better job representing their clients and dealing with customers, and consumers of their services will benefit. Under A.R.S. § 32-2101(47)(n), when a person acts as an agent in a transaction in which the sale or lease of real property is a part of, contingent on, or ancillary to the transaction, a real estate license is required. Yet the sale of businesses and business opportunities includes many aspects that are unfamiliar to the rank-and-file real estate agent. Thus, the person with this area of expertise has the opportunity to obtain this designation and market themselves as having "raised the bar" over the competition.

A separate time-frame for Departmental review of a distance learning course has been established, longer than the time-frame for review of an application for a traditional, live-instruction course. School operators submitting applications for distance learning course approval will know up front that review of a distance-learning course takes longer than review of a live course.

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<u>Total No. of Educ. Applic.</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY2003</u>	<u>FY2004</u>
(Schools, courses, and instructors)	120	410	1,990	1,626	1,406	1,103

Developers may be directly and adversely affected by the slight adjustment to some of the time-frames for development public reports, amendments, and exemptions; however, the number of applications received Department-wide continues to rise. Industry has recovered from a fall in numbers following 9/11/2001. Employee turnover, due to budget constraints and salary limitations, is also having a negative impact on the Department's ability to keep up. Department resources are static or decreasing due to the budget situation.

<u>No. of Development Applic.</u>	<u>FY1999</u>	<u>FY2000</u>	<u>FY2001</u>	<u>FY2002</u>	<u>FY2003</u>	<u>FY2004</u>
	1,892	1,915	1,575	1,690	1,778	2,212

Non-substantive changes are made to R4-28-A1215. The changes to R4-28-A1215 and R4-28-B1210 initially proposed, which would have required developers to place earnest money deposits in neutral escrow accounts or broker's trust accounts for safekeeping, have been removed from this rulemaking pending further discussion with developers, consumers and other interested parties.

The changes to R4-28-1303 are consistent with current Department practice and are not contrary to public records laws. Non-substantive changes are made to R4-28-1310.

**General Description of the Probable Impact on Private and Public Employment in Businesses, Agencies and Political Subdivisions of this state directly affected by the Proposed Rulemaking:**

None is expected as a result of the changes.

**A Statement Of The Probable Impact Of The Proposed Rulemaking On Small Businesses:**

**a) Identification of the small businesses subject to the proposed rulemaking:**

Small brokerages are subject to the rulemaking, but no adverse impact is expected as a result of these changes.

**b) Administrative and Other Costs Required for Compliance with the Proposed Rulemaking:**

None is expected.

**c) A description of the methods that the agency may use to reduce the impact on small businesses.**

None.

**d) The Probable Cost and Benefit to Private Persons and Consumers who are Directly Affected by the Proposed Rulemaking.**

None is expected.

**The Probable Effect on State Revenues**

None is expected.

**A Description of any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rulemaking:**

None

**Limitations on Data**

None

**10. A description of the changes between the proposed rule and final rule:**

Numerous grammatical and formatting corrections and non-substantive changes have been made, including revision of some subsections for which no changes were proposed. Generally these changes were to reflect active-voice construction and attribute responsibility for an action to the Department or a specified regulated party.

The Department has amended R4-28-103 to state that the Department will grant an applicant one extension each during the administrative and substantive review periods. Rather than increasing some license time-frames in Table 1

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as proposed, the Department has instead reallocated the amount of time in the administrative and substantive reviews. The over-all time period has either not been increased, or has been increased by less than proposed. The Department extended the over-all time period for eight types of licenses, seven of them by fewer days than proposed. The periods for individual brokers and salespersons to respond to completion requests have been extended to conform to current practice, and the periods for developers to respond to completion requests and requests for additional information have been increased to reduce the number of extensions needed.

In response to questions raised by the rule as it was written and as the Department had proposed to change it, R4-28-303 (A)(1) was amended to mirror the provisions of A.R.S. § 41-1092.11, pertaining to when the denial of a renewal application takes effect. R4-28-303 (A)(2) has been amended to require an employing broker's designated broker to sign a salesperson's or associate broker's renewal application only when filed in paper format, as distinguished from on-line renewals which will be implemented in early 2005. Provisions of R4-28-303 (E), (F), and (G) were further amended to promote understanding.

The proposed changes to R4-28-401 and R4-28-404 were pulled from this rulemaking. These rules need more changes than were proposed, many of which will be substantive and require further discussion and consideration. These education rules will be included in a future rulemaking package as stated in the Department's Five-year-Rule Review approved by G.R.R.C. on September 14, 2004.

Instead of placing the requirements for getting the designation as a business brokerage specialist in one Section (R4-28-401) and for renewing in another Section (R4-28-402) as proposed, the requirements for obtaining the designation were instead adopted as a new Section, R4-28-405. The Department has pulled from this rulemaking the requirements to renew the designation pending further study and discussion. A better rule will result from taking the time to give it additional consideration. Procedures for current licensees who meet specific criteria and seek to be "grandfathered" into the business brokerage specialist designation have been added. A non-substantive change has been made to R4-28-402 (B)(1)(c) to clarify one type of continuing education waiver.

Proposed changes to R4-28-803 that were controversial were pulled from the rulemaking pending additional discussion. The proposed changes to subsection (A) that were not controversial remain in this final rulemaking and include additional, non-substantive changes that were made to reflect active voice. Non-substantive changes were also made to subsection (B) so that it is in active voice.

Proposed new subsection R4-28-1101 (L) has been pulled from the rulemaking based on stakeholder comments. The information in a public report up to 20 years old would likely be out-of-date and of questionable value.

The proposed changes to R4-28-1103 (A)(5) and (6) have been dropped, and subsections (C) and (D) were rewritten. Subsection (C) now comports with the responsibility placed on a broker by A.R.S. § 32-2153 (A)(21). Subsection (D) was rewritten to more clearly state what was intended, again at the suggestion of G.R.R.C. staff. Subsection (F) was pulled from this rulemaking because revisions following comments from stakeholders, and Department and G.R.R.C. staff resulted in substantive changes to the proposed rule.

Proposed changes to R4-28-101, R4-28-A1215, and R4-28-B1210 that would have resulted in consumers' down payments and other advanced monies paid to a developer prior to close of real estate transactions be held in a neutral escrow or broker's trust account, have been removed from this rulemaking pending additional study and discussions with stakeholders and consumers. Non-substantive changes as proposed by the Department to R4-28-A1215 remain.

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

Name/Rule, Comment	Agency Response
Robert Coltin, D R Horton, Inc., and member of Central Arizona Home Builders /R4-28-101 The Department proposes to delete defined terms (franchise, franchisee, and fictitious name) but they still appear in rules; make sure they're appropriately deleted.	The Department has removed other occurrences of deleted terms.
Robert Coltin/R4-28-1103 Recommends that the timing for informing the Department of violation be changed from immediately to promptly; questions appropriateness of "believed to be (a violation)".	The Department initially revised the rule based on comments received, and shifted the focus of the rule to insulating brokers from disciplinary action for failing to supervise the salespersons and brokers in the employing broker's employ by reporting statute and rule violations to the Department when they learned of them. However, but the result was a substantive change from the proposed rule and it has been pulled from this rulemaking.

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<p>Robert Coltin/R4-28-B1210                  Department's assessment of the potential impact of requiring earnest money to be held in escrow is that developer's costs <i>may</i> increase; costs definitely <i>will</i> increase and have a significant negative impact on builders of all sizes.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>Home Builders Association of Central Arizona (HBACA), Spencer Kamps /R4-28-B1210                  The HBACA strongly opposes the earnest money provisions. (1) Doesn't understand why it's in the rules package; stakeholder meetings on issue did not achieve consensus.                  (2) Legislation proposed early in the session last year included this provision and it was ultimately pulled from the legislation. The costs of this rule to the developer will be passed to homebuyers.                  (3) Real Estate Recovery Fund exists to deal with builders who have gone out of business.                  (4) Believe change is very substantive &amp; calculated an impact of \$215 Million.                  (5) Challenges Department's legal authority to adopt this rule, since it was included in a failed legislative proposal.</p>	<p>1) Stakeholder meetings did not include input from Department or consumers.                  2) The Department is unaware of any legislation including this or similar provision last year.                  3) Real Estate Recovery Fund does not provide for relief to consumers for losses as a result of developer's conversion of earnest money deposits.                  4) No information was provided to support the estimated impact of \$250 Million, how it was calculated, or for what period of time the figure represents.                  5) The Department has statutory authority to adopt rules regulating real estate and related industries, including development of subdivisions, and has no knowledge of any legislative package on this issue last year.                  The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>HBACA, Spencer Kamps/Table 1                  Acknowledges resources are limited but the commenter's experience is that very few times has the Department utilized full time-frames currently in place; would like to see evidence, discuss necessity for the proposed increase.</p>	<p>The Department continues to experience a shortage of resources, particularly personnel. Turn-over of staff has resulted in fewer experienced employees handling the increased workload, and those employees cannot maintain the pace at which they have been forced to work. However, the Department has reduced the increase to the over-all time-frames, and has instead reallocated the number of days between the administrative and substantive review periods.</p>
<p>Joel Huston, Vice President of Sales and Marketing and Designated Broker for Trend Homes, Inc. /R4-28-B1210                  Agrees with Kamps. Industry polices itself; developers use earnest money as only security for thousands of dollars spent to build a home. Developer will usually keep the buyer's earnest money when the buyer cancels late in the game.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>

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<p>Consumer Advisory Network, James Eckley/R4-28-803                  Consumer Advisory Network reviews matters effecting consumers in real estate and construction issues; keeping earnest money in escrow account is good idea. Economic risk to developer/builder that buyer won't perform is not only risk.</p> <p>(1) Dicor is a builder that folded in early 90's. Using an advertising blitz, in a period of a week it sold properties to 11 buyers and placed \$900,000 in deposits into its general fund. Dicor filed bankruptcy the following Monday, ultimately re-sold those properties cleansed of the earnest money, and pocketed the earnest money all over again.</p> <p>(2) LAF Builders, a subsidiary of United Homes, took earnest money when United Homes was in default with its loan with its master lender. All of it was secured by the lender's lien on the builder's general account and after a sufficient sum was taken (we think it was \$8000 or \$9000) the bank declared a default, United Homes transferred all the properties to LAF Builders so they were clean of any purchase contracts. United took a bankruptcy, sanitized those (property) titles. The lender foreclosed free and clear on those properties and re-sold them back to those same owners because, by that time, the buyers had substantial money involved. There were claims against the Registrar of Contractors Recovery Fund.</p> <p>(3) In most cases, these cases "max" out the Recovery Fund. Many times the amount lost far exceeds the maximum amount available from the Fund. There's also quite a burden of proof, and a civil judgment may be required. By the time a consumer gets to the Fund, the Fund may have paid the maximum for that builder and so there's no coverage whatsoever.</p> <p>(4) Earnest money placed in the developer's general operating account also results in the developer's gaining an immediate oppressive bargaining superiority. Consumers have little or no choice; virtually all developers require the buyer to agree that the earnest deposit goes into the developer's general operating account. The oppressive bargaining power also results in developers trying to short cut on warranties, limiting the builder's warranty. The \$5,000-\$10,000 earnest money deposit may represent the developer's entire mark-up if building on a 5%-6% margin. The builder might be more motivated to declare forfeiture and try to get somebody else's earnest money.</p> <p>Because of their bargaining position, some developers virtually prohibit home inspectors on the site, or require then to agree to be responsible for all guarantees and all warranties will be void on anything the inspector touches, or requiring home inspectors to insure against any damages that occur at the site.</p> <p>If the developer is arguing with the buyer and already has the buyer's money, there's less incentive to work with the buyer. (Money in a neutral escrow) would provide an incentive for the developer complying with punch lists, instead of taking the position that the buyer can take the house the way it is or walk, because the developer already has the buyer's earnest money.</p> <p>(5) Financing is another place where the developer has oppressive bargaining power. The buyer doesn't have any bargaining power because the developer already has their money. If the developer is so narrowly financed that he needs that deposit to operate, all the more reason that money should be placed in a neutral escrow for safekeeping.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>Arizona Association of Realtors (A.A.R.), Michelle Lind/R4-28-303                  Concerned with the Broker Supervision &amp; Control Audit form as a condition of broker renewal. A.A.R. has some specific issues/concerns with the form, rather than the rule requiring it as a condition of licensure.</p>	<p>The Department will consider A.A.R.'s comments concerning the form.</p>
<p>A.A.R., Michelle Lind/R4-28-1101 (L)                  The A.A.R. doesn't have a serious concern with the disclosure, but is concerned that buyer may rely on outdated information.</p>	<p>The Department has pulled this subsection from the rulemaking.</p>

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<p>Michelle Lind/R4-28-1103 (A)(6)                  Acknowledging that the broker is responsible for advertising, the A.A.R. suggests the rule be clarified that the broker himself/herself does not have to physically look at each piece of advertising by their salesperson. Many brokers have systems in place to make sure that advertising is in compliance; requiring the broker to do it personally would not be practical.</p>	<p>The Department agrees and the proposed changes to this subsection will not be made.</p>
<p>Michelle Lind/R4-28-1103 (E)                  The A.A.R. appreciates that part of the rule that would allow a broker to feel comfortable in reporting a violation, but (1) It doesn't address the magnitude of the violation. There are a lot of minor violations that perhaps the broker will just take care of, deal with in the office; (2) It may cause serious administrative issues for the Department with huge influx of every single rule violation from numerous brokers. It could overwhelm the Department with minor issues; and                  (3) It doesn't address the consequences if a broker doesn't report, perhaps, a minor violation. Is the broker sanctioned for that more severely than would have been warranted for the violation itself?</p>	<p>The Department initially revised the rule based on comments received, and shifted the focus of the rule to insulating brokers from disciplinary action for failing to supervise the salespersons and brokers in the employing broker's employ by reporting statute and rule violations to the Department when they learned of them. However, but the result was a substantive change from the proposed rule and it has been pulled from this rulemaking.</p>
<p>Shea Homes, Adam Watkins/R4-28-B1210                  There are very strong disclosures in our contract that we discuss with buyers prior to signing that all monies come to Shea Homes; they don't go into a neutral third party escrow. Frequently sales are under conditional approval from the Department and in those transactions the money does go into the title company. Disagrees that buyers don't have resources and all power lies with builder. Contract also includes arbitration provision that allows buyer to air grievances. When buyer is in default, they could lose a portion of their earnest money or mortgage decline fee, but developer would do same thing because title company does same thing--look at terms of contract and execute terms. Developer occupies risk position until escrow closes; they're paying the carrying cost. [This rule would] shackle the hands of 95% of the builders that are doing things right because there have been some issues in the past. People could lose money if a title company goes out of business. Agrees with comments by Mr. Huston &amp; Mr. Kemp's (HBACA).</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>Consumer Advisory Network, James Eckley/R4-28-803, responding to Watkins (above)                  (1) Escrow companies going out of business as a reason for not putting buyer deposits in an escrow account doesn't make sense because the builder chooses the escrow. It's already built into the contract; there's no bargaining.                  (2) Earnest money is to show the buyer's earnestness, and it is not a liquidated damages deposit. The earnest money stays with the escrow company, which can't make an arbitrary decision and hand the money over; it will become liable if it gives the money to the wrong party.                  (3) Buyer is much less likely to pursue arbitration to try and get the money back and the developer may be spending the buyer's \$10,000 to defend himself. The builder is not motivated because he has the money; it's better to have the money sitting in escrow.                  (4) R4-28-803 should be amended to be in line with standard practices that have dominated the resale industry for 40 years.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>Shea Homes, Adam Watkins/ R4-28-803, responding to Eckley (above)                  1) Builders don't require use of a particular title company; they have a preference.                  2) If the point is for the buyer to get the money back as quickly as possible, that would be through arbitration, not litigation in court.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>HBACA, Spencer Kamps/R4-28-803                  Wonders why change is necessary and what it will accomplish.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>

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<p>Edwin Ricketts/R4-28-B1210 Although much can be made of the potential harm to the public from these unprotected deposits, the home building industry presently has a significant financial reliance on placing earnest &amp; down monies in the builder's general account. Suggests creation of a special fund paid by builders that do not place all earnest &amp; down monies into a protected account.</p>	<p>The Department has pulled these provisions from the rulemaking pending further discussion of the issues with developers and consumers.</p>
<p>Edwin Ricketts/R4-28-1103 (F) It will result in significant paperwork for broker and Department; may create liability for person reporting suspected violation; no other jurisdictions have similar law. Suggests consideration of Colorado statute requiring the reporting of lawsuits.</p>	<p>The Department initially revised the rule based on comments received, and shifted the focus of the rule to insulating brokers from disciplinary action for failing to supervise the salespersons and brokers in the employing broker's employ by reporting statute and rule violations to the Department when they learned of them. However, but the result was a substantive change from the proposed rule and it has been pulled from this rulemaking.</p>
<p>Keith McLeod / R4-28-1103 (B) Requirement for written policy &amp; procedure manual for small brokerage offices that only have one or two agents is unnecessary.</p>	<p>The Department will amend the rule to exempt very small brokerage offices in a future rulemaking.</p>
<p>Carl Schroeder/R4-28-1103 (B) The Department's model for Broker's office policy manual is not applicable to situation where broker is the only one in the office.</p>	<p>The Department will amend the rule to exempt very small brokerage offices in a future rulemaking.</p>

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

None

**13. Any material incorporated by reference and its location in the text:**

None

**14. Whether the rule was previously made as an emergency rule:**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 28. STATE REAL ESTATE DEPARTMENT**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R4-28-101. Definitions
- R4-28-102. Document Filing; Computation of Time
- R4-28-103. Licensing Time-frames
- R4-28-104. ~~Fees~~ Development Inspection Fee
- Table 1. Time-frames

**ARTICLE 3. LICENSURE**

Section

- R4-28-301. General License Requirements; Non-resident License
- R4-28-302. Employing ~~or Designated~~ Broker's License; ~~Nonresident~~ Non-resident Broker
- R4-28-303. License Renewal; Reinstatement; ~~License Changes in Personal Information, License, or License Status;~~ Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance
- R4-28-304. Branch Office; Branch Office Manager
- R4-28-305. Temporary License; Certificate of Convenience
- R4-28-306. Unlawful License Activity

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ARTICLE 4. EDUCATION

- Section  
R4-28-402. Continuing Education Requirements; Waiver; Distance Learning  
R4-28-405. Business Brokerage Specialist Designation

ARTICLE 5. ADVERTISING

- Section  
R4-28-502. Advertising by a Licensee  
R4-28-503. Promotional Activities  
R4-28-504. Development Advertising

~~ARTICLE 10. FRANCHISES AND FICTITIOUS NAMES REPEALED~~

- Section  
R4-28-1001. ~~Fictitious Names Repealed~~

ARTICLE 11. PROFESSIONAL CONDUCT

- Section  
R4-28-1101. Duties to Client  
R4-28-1103. Broker Supervision and Control

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY,  
OR SPECIAL ORDER OF EXEMPTION

- Section  
R4-28-A1215. Development Sales

ARTICLE 13. ADMINISTRATIVE PROCEDURES

- Section  
R4-28-1303. Information Obtained in an Investigation  
R4-28-1310. Rehearing or Review of Decision; Response; Decision

ARTICLE 1. GENERAL PROVISIONS

**R4-28-101. Definitions**

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

“Active license” or “active status license” means a current license issued by the Department to a broker or salesperson that states the name of the broker that employs the broker or salesperson and the location at which the salesperson or broker is employed. If referring to an employing broker, it means a currently licensed employing broker with a currently licensed designated broker of record.

“ADEQ” No change

“ADWR” No change

“Closing” No change

“Credit hour” No change

“Course” No change

“D.b.a.” or “dba” means ‘doing business as’ and is a name, other than a person’s legal name, authorized by the Department for a licensee’s use in conducting business.

“Distance learning course” means a course of instruction outside a traditional classroom situation consisting of computer-based interactive instructional material, ~~such as computer based or audio visual~~, requiring completion in the course credit hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.

~~“Fictitious name” means any name used to conduct business other than a person’s legal name, and includes a d.b.a. name or trade name.~~

~~“Franchise” means a contract or agreement, either express or implied, oral or written, between two or more persons by which:~~

~~A franchisee is granted the right to engage in the business of offering, selling, and distributing goods or services under a marketing plan or system prescribed in substantial part by a franchiser; and~~

~~The operation of the franchisee’s business pursuant to the plan or system is substantially associated with the franchiser’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchiser or its affiliate; and~~

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~~The franchisee is required to pay, directly or indirectly, a franchise fee.~~  
“Immediate family” No change  
“Individual” No change  
“Material change” No change  
“Non-resident license” means a license authorized under the provisions of 32-2122(A) issued to a person who has been domiciled in this state for less than one year and who does not meet any of the following:

- Has an Arizona driver’s license;
- Has an Arizona motor vehicle registration;
- Has been employed in Arizona;
- Has an Arizona voter registration;
- Has transferred banking services to Arizona;
- Has changed permanent address on all pertinent records;
- Is a domestic corporation or limited liability company;
- Has filed an Arizona income tax return with the Department of Revenue during the previous or current tax year; or
- Has received benefits from any Arizona public service department or agency, such as welfare, food stamps, unemployment benefits, or worker’s compensation.

“Property interest” No change

**R4-28-102. Document Filing; Computation of Time**

- A. No change
- B. In computing any period of time allowed by these rules or by an order of the Commissioner, the day of the act, event, ~~and~~ or default from which the designated period of time begins to run ~~shall is not be~~ included. The last day of the period ~~shall be is~~ included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day ~~which that~~ is not a Saturday, Sunday, or a legal holiday. ~~When~~ Unless the time period is specified as calendar days, when the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays ~~shall be~~ are excluded from the computation.

**R4-28-103. Licensing Time-frames**

- A. No change
- B. Administrative completeness review.
  - 1. No change
  - 2. No change
  - 3. If the applicant fails to submit the missing information before expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension in writing from the Department before expiration of the Response to Completion Request period in Table 1. The Department shall grant the applicant one extension for the number of days identified as the Response to Completion Request period for the type of license. An applicant whose file has been closed may obtain a license by submitting a new application.
- C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.
  - 1. No change
  - 2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn unless the applicant requests in writing an extension from the Department before expiration of the Response to Additional Information period in Table 1-an extension is granted by the Commissioner by a written request. The Department shall grant the applicant one extension for the number of days identified in the Response to Additional Information period for the type of license.
  - 3. No change
- D. Renewals. If an applicant for renewal of a salesperson’s or broker’s license submits a complete renewal application:
  - 1. No change
  - 2. After the expiration date, or if a substantive review is required because the applicant wishes to make changes to or has answered in the affirmative ~~to~~ any question on the license questionnaire, the Department shall process the application as a modified or amended application.

**R4-28-104. Fees Development Inspection Fee**

- ~~A. Licensing Fees.~~
  - ~~1. Broker’s exam and examination application, \$115.00;~~
  - ~~2. Broker’s license, \$125.00;~~
  - ~~3. Broker’s renewal, \$125.00;~~
  - ~~4. Broker’s late renewal pursuant to A.R.S. § 32-2130(C), additional \$20.00 per month fee up to a maximum of \$120;~~

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5. Salesperson's exam and examination application fee, \$90.00;
  6. Salesperson's license, \$60.00;
  7. Salesperson's renewal, \$60.00;
  8. Salesperson's late renewal pursuant to A.R.S. § 32-2130(C), additional \$10.00 per month fee up to a maximum of \$60;
  9. Branch office license,
    - a. 12 months or less, \$35.00;
    - b. 13 to 24 months, \$50.00;
    - c. Renewal, \$50.00;
  10. Change of name or address, \$10.00;
  11. Temporary broker's license, \$50.00;
  12. Temporary cemetery salesperson's license, \$50.00;
  13. Membership camping salesperson's certificate of convenience, \$50.00.
- B.** Development fees:
1. Public Report, \$500.00;  
Subdivision public report, amended, \$250.00;  
Unsubdivided land public report, amended, \$500.00;  
Membership camping public report  
amended/renewal, \$300.00;  
Timeshare Exemption, \$300.00;
  2. Time share public report (per interval, maximum \$1,000), \$20.00;
  3. Membership camping lottery or drawing application, \$250.00;
  4. Cemetery Certification, \$500.00;  
Cemetery Amendment, \$500.00;
  5. Conditional Sales Exemption, \$100.00;
  6. Special Order of Exemption, \$100.00.
- C.** A fee shall be charged for a development site inspection pursuant to A.R.S. §§ 32-2182, 32-2194.02, 32-2195.02, 32-2197.05, and 32-2198.04, before or after issuance of a public report. Multiple inspections and fees may be required based on development circumstances.

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**Table 1. Time-frames (Calendar Days)**

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Time-frame
Broker <del>and</del> or Salesperson (Individual)	A.R.S. § 32-2122 A.A.C. R4-28-301	<del>45</del> <u>30</u>	<del>45</del> <u>30</u>	<del>45</del> <u>30</u>	30	60
<u>Individual Renewal (without change)</u>	<del>A.A.C. R4-28-302</del> <u>R4-28-303</u>	<del>45</del> <u>30</u>	<del>45</del> <u>30</u>	<del>0</del> <u>30</u>	<del>0</del> <u>30</u>	<del>45</del> <u>60</u>
<u>Modified/Amended (Change of Name, Address, or License Status)</u>	A.A.C. R4-28-303	<del>45</del> <u>30</u>	<del>45</del> <u>30</u>	<del>45</del> <u>30</u>	30	60
<u>Individual Reinstatement</u>	<u>A.A.C. R4-28-303</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>60</u>
Corp/LLC/ Partnership/ PC/ PLC/ <u>Desig. Broker Status</u>	A.R.S. § 32-2125 <u>A.A.C. R4-28-302</u>	<del>30-60</del>	30	<del>90</del> <u>60</u>	60	120
<u>Branch Office</u>	<u>A.R.S. § 32-2127</u>	<u>60</u>	<u>30</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Entity/DB status Renewal (without change)</u>	<del>A.A.C. R4-28-301</del> <u>R4-28-303</u>	<del>30-60</del>	30	<del>0</del> <u>60</u>	<del>0</del> <u>60</u>	<del>30</del> <u>120</u>
<u>Modified/Amended (Change of Name, Address, or License Status)</u>	A.A.C. R4-28-303	<del>30-60</del>	30	<del>90</del> <u>60</u>	60	120
<u>Entity Reinstatement</u>	<u>A.A.C. R4-28-303</u>	<u>60</u>	<u>30</u>	<u>60</u>	<u>60</u>	<u>120</u>
Temporary Broker	A.R.S. § 32-2133	<del>30-60</del>	30	<del>90</del> <u>60</u>	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	<del>30-60</del>	30	<del>90</del> <u>60</u>	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01	<del>30-60</del>	30	<del>90</del> <u>60</u>	60	120
<del>Branch Office</del>	<del>A.R.S. § 32-2127</del>	<del>45</del>	<del>45</del>	<del>45</del>	<del>30</del>	<del>60</del>
School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval: New ( <u>Live Instruction</u> ) New ( <u>Distance Learning</u> )	A.R.S. § 32-2135 A.A.C. R4-28-404 <u>A.A.C. R4-28-402</u> <u>R4-28-404</u>	10 <u>30</u>	15 <u>30</u>	20 <u>90</u>	15 <u>30</u>	30 <u>120</u>
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30

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ADVERTISING						
Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14	15	5	0	0	15
Subdivision (only for drawing or contest)	A.A.C. R4-28-503(D) A.R.S. § 32-2183.01(I)	15	5	0	0	15
Time-Share (only for drawing or contest)	A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (the offer of a premium)	<del>A.R.S. § 32-2197.11(H)</del> <u>A.R.S. § 32-2197.17(I)</u> A.A.C. R4-28-503(D) <del>A.R.S. § 32-2197.11(K)</del> <u>A.R.S. § 32-2197.17(K)</u> A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>50</del> <u>60</u>	<del>20</del> <u>40</u>	<del>70</del> <u>100</u>
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	<del>40</del> <u>30</u>	<del>40</del> <u>30</u>	<del>40</del> <u>30</u>	<del>40</del> <u>30</u>	<del>20</del> <u>60</u>
Certificate of Authority	A.R.S. § 32-2194.03(A)	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>50</del> <u>60</u>	<del>20</del> <u>40</u>	<del>70</del> <u>100</u>
Amended Certificate	A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	<del>40</del> <u>30</u>	<del>40</del> <u>30</u>	<del>40</del> <u>30</u>	<del>40</del> <u>30</u>	<del>20</del> <u>60</u>
WAIVERS						
Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12
EXEMPTIONS						
Subdivision	A.R.S. § 2181.01 A.A.C. R4-28-B1202	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>40</del> <u>80</u>
Unsubdivided Land	A.R.S. § 32-2195.01 A.A.C. R4-28-B1202	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>40</del> <u>80</u>
Time-Share	A.R.S. § 32-2197.13	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>40</del> <u>80</u>
Membership Camping	A.R.S. § 32-3198.03	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>20</del> <u>40</u>	<del>40</del> <u>80</u>

**ARTICLE 3. LICENSURE**

**R4-28-301. General License Requirements: Non-resident License**

A. An applicant for ~~or holder of~~ any Department-issued license; ~~or license renewal or amended license~~, including, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the entity, shall submit the following information to the Department:

1. A signed ~~certification~~ original licensure or renewal questionnaire, as applicable, disclosing any:
  - a. No change
  - b. No change
  - c. No change
  - d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or violation of the racketeering laws by the applicant, or payment from a recovery fund or fund of last resort due to the applicant's action or inaction.
2. If ~~any response to the applicant discloses information under subsection (A)(1) is answered in the affirmative~~, the applicant shall provide all of the following written documentation ~~for each applicant answering in the affirmative~~:
  - a. A signed written statement describing in detail the circumstances surrounding the matter disclosed;
  - ~~a-b.~~ No change

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~~b-c.~~ Three written and dated references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least one year before the date of the Department's receipt of the application. Each reference shall be dated no more than one year from the date the application is submitted to the Department and include the writer's name, address, and telephone number;

~~e-d.~~ A 10-year work history, ~~reflecting~~ stating the each employer's name and address, supervisor's name and telephone number, position held, and dates of employment, ~~including~~ specifying any periods of unemployment;

~~d-e.~~ A certified copy of all documents pertaining to any document, such as the findings of fact, conclusions of law, every reprimand, censure or sanction, an order assessing a civil penalty, or denying, suspending, restricting, or revoking any professional or occupational license currently held or previously held by the applicant within the last 10 years;

~~e-f.~~ No change

~~f-g.~~ A certified copy of any document ~~of evidencing~~ a payment ~~against of a judgment on behalf of the applicant by any recovery fund administered by any state or professional or occupational licensing board,~~ or repayment by the applicant as a judgment debtor ~~by to~~ any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.

~~g-h.~~ No change

~~h-i.~~ No change

3. No change

4. No change

5. No change

**B.** In addition to the information required in subsection (A), ~~any person applying an applicant~~ for a salesperson's or broker's license shall provide information showing the person meet the qualifications listed in A.R.S. § 32-2124, A.A.C. R4-28-401, and R4-28-403, ~~and. If disclosing censure, sanction, disciplinary action, or other order against any professional or occupational license currently or previously held by the applicant, the applicant shall submit a certified license history from each state in which the applicant holds, or has held, a professional or occupational license within the 5-five years pre-ceeding before the application.~~

**C.** The Department shall not issue a broker's license to any person who ~~is holds an actively licensed salesperson active salesperson's license in this state until the.~~ An active-status salesperson applying for broker's license may simultaneously submit a severance signed is severed by the designated broker on behalf of the salesperson's employing broker under R4-28-303 (E)(10) or is may request to be administratively severed as prescribed in under R4-28-303 (E)(4) or (F) (G).

**D.** ~~Only~~ The Department shall issue to a qualified person a license bearing the legal name of the licensee and any additional nickname, corporate, or fictitious dba name that the Commissioner finds is not detrimental to the public interest shall be placed on a license certificate. A professional corporation or professional limited liability company licensed under A.R.S. § 32-2125(B) shall not adopt a dba name.

**E.** No change

**F.** ~~Except as prescribed in A.R.S. §§ 32-2184, 32-2194.10, 32-2195.10, 32-2197.03 and 32-2198.01(D), every licensee~~ Each salesperson, broker, school owner, director, administrator, and instructor shall, within 10 days of each occurrence, notify the Commissioner; in writing; of any change in information contained in the license certification questionnaire specified in provided under subsection (A)(1)(a) through (d) and provide documentation under listed in subsection (A)(2).

**G.** A licensee shall, within 14 calendar days or a later date determined by the Department, respond to a request from the Commissioner or the Commissioner's representative for any documents, electronic files, written statements, or other information required as a part of a complaint investigation, regardless of whether the licensee is named in the complaint.

**R4-28-302. Employing ~~or Designated~~ Broker's License; Non-resident Broker**

**A.** ~~Any~~ A person applying for an employing ~~or designated~~ broker's license shall provide the following information:

1. The name, business address, telephone number, fax number and email address, if any, ~~license number and expiration date of the employing~~ and designated broker's license name, license number and expiration date, and the signature of the designated broker;

2. ~~The type of broker's license to be held~~ Whether the broker is an individual, a sole proprietorship, corporation, partnership, limited liability company, professional corporation or professional limited liability company;

3. No change

4. No change

5. No change

6. No change

**B.** Partnership.

1. ~~An~~ When the applicant seeking to be a designated broker of is a partnership, it the applicant shall name a broker to serve as designated broker, shall:

a. ~~If the general partner is a partnership, The designated broker shall be an individual who is a partner of the general~~

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- partner if the general partner is a partnership.;
- b. ~~If the general partner is a corporation, The designated broker shall be an individual who is a corporate officer of the corporate partner if the general partner is a corporation.~~;
  - c. ~~If the general partner is a limited liability company, The designated broker shall be an individual who is a member or of the member-managed limited liability company or manager of the manager-managed limited liability company if the general partner is a limited liability company.~~;
  - d. ~~If a limited partner, not be eligible to be a designated broker for the partnership. A limited partner of a partnership shall not be designated broker for the partnership.~~
2. In addition to the information provided in subsection (A), ~~the partnership broker~~ an applicant for an employing broker's license as a partnership shall, if applicable, provide:
- a. No change
  - b. No change
  - c. ~~An affidavit~~ A written statement signed by the designated broker stating that:
    - i. No change
    - ii. No change
    - iii. No change
    - iv. Each general partner is qualified to do business in Arizona; and
    - v. The name of the partnership complies with A.R.S. § 29-245 and ~~4 A.A.C. 28, Article 10~~ subsections (H) and (I), and is not likely to be misleading or confusing;;
    - d. No change
    - e. A copy of the ~~registration application for partnership registration~~ stamped "Received and Filed" by the Arizona Secretary of State; and
    - f. No change
- C. Corporation. In addition to the information provided in subsection (A), ~~a corporate broker~~ an applicant for an employing broker's license for a corporation shall provide:
- 1. No change
  - 2. No change
  - 3. No change
  - 4. ~~An affidavit~~ A written statement signed by the designated broker stating that:
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. Each corporation is qualified to do business in Arizona; and
  - 5. No change
- D. Limited liability company. In addition to the information provided in subsection (A), an applicant for an employing broker's license for a limited liability company shall provide:
- 1. No change
  - 2. No change
  - 3. No change
  - 4. ~~An affidavit~~ A written statement signed by the designated broker stating that:
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  - 5. No change
  - 6. No change
- E. No change
- 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. A filed and stamped application for registration of the foreign limited liability company, foreign corporation, or partnership; and
  - 7. No change
- F. No change
- G. No change

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- H. ~~The designated broker shall:~~
1. ~~Be responsible for supervising the associate brokers, salespersons and employees of the employing broker within the course of their employment;~~
  2. ~~Notify the Department on the Change Form within 10 days after a salesperson or broker leaves a broker's employment. The Department shall not license an employing broker or authorize an employing broker to do business under a dba name similar to that of any employing broker already licensed if the name would cause uncertainty or confusion to the public. If there is a conflict of names between two employing brokers, the Commissioner shall require the employing broker seeking licensure to supplement or otherwise modify the broker's name.~~
- I. ~~The employing broker shall be responsible for:~~
1. ~~The acts of all associate brokers, salespersons, and other employees acting within the course of their employment; and~~
  2. ~~Supervising the associate brokers, salespersons, and employees of the employing broker within the course of their employment.~~
- ~~The Department shall not license an employing broker under more than one dba name and a person shall not conduct or promote real estate business under any name other than the name under which the person is licensed.~~
- J. ~~A broker's license broker shall not be used employ to enable a salesperson or associate broker and allow the salesperson or associate broker nominally employed by the broker to establish and carry on a brokerage business if the broker's only interest is the receipt of a fee for the use of the license and the broker does not exercise supervision over the salesperson or associate broker.~~
- K. ~~Change of Designated Broker~~ designated broker.
1. ~~If the To resign as an employing broker's designated broker a employing broker is changing its designated broker, the current designated broker shall submit to the Department a copy of the broker's letter of resignation and shall return the licenses issued to the designated broker's broker and the employing broker's broker licenses to the Department.~~
  2. ~~If by partnership agreement, or corporate or company resolution, the designated broker is removed, the employing broker shall return the employing broker's and designated broker's licenses. A licensed entity may remove its designated broker by submitting to the Department a copy of the partnership agreement, corporate or company resolution removing the broker and returning to the Department the licenses issued to the employing broker and designated broker.~~
  3. ~~The employing broker whose designated broker has resigned or been removed shall cease conducting business until the employing broker has complied with subsection (K)(4).~~
  - 2.4. ~~If the entity continues An employing broker whose designated broker has resigned or been removed may continue business without interruption; if the incoming designated broker shall simultaneously with, or on the same day as, or the next business day following, the departure or removal of the outgoing designated broker:~~
    - a. ~~Complete, sign, and submit Completes, signs, and submits~~ the Change Form as prescribed in R4-28-303; and
    - b. ~~If the entity is a corporation or limited liability company, submit submits~~ a resolution appointing the new broker to act on its behalf; or
    - c. ~~If the entity is a partnership, submit submits~~ an amendment to the partnership agreement naming the new broker to act on its behalf ~~or a new application, as applicable.~~
  3. ~~If the designated broker has not been fingerprinted, the broker shall submit a full set of fingerprints with the application and fee as required in A.R.S. § 32-2108.01.~~
- L. ~~Nonresident Non-resident employing broker.~~
1. ~~If a licensed nonresident broker An employing broker that holds a non-resident license and maintains a principal office outside Arizona, the broker this state shall:~~
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  2. ~~If a An employing broker that holds a licensed nonresident non-resident license broker and employs a licensed salesperson or broker within the state, the broker shall:~~
    - a. No change
    - b. No change
  3. ~~A nonresident An employing broker who holds a non-resident license broker shall notify the Department within 10 days if of any change to any information required under this Section-changes.~~

**R4-28-303. License Renewal; Reinstatement; ~~License Changes of Personal Information, License, or License Status;~~ Professional Corporation or Professional Limited Liability Company Licensure; Administrative Severance**

- A. Renewal.
1. If a salesperson or broker makes a timely and sufficient application applies for a license renewal or a new license with reference to any activity of a continuing nature, before expiration, the existing license ~~remains in effect until the~~

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~~application has been approved or denied by the Department~~ does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the Commissioner's order or a later date fixed by order of the reviewing court.

- a. ~~If the application is deemed administratively incomplete and the applicant has not provided the requested information within the completion request period, the license will expire on the license expiration date.~~
- b. ~~If the application is denied, the person shall not act, or attempt to act, as a salesperson or broker.~~

2. Any salesperson or broker applying for a license renewal shall submit the following information on the Application for License Renewal form:

- a. No change
- b. No change
- c. ~~The~~ If the renewal is for an active license and is filed in paper format, the Department shall require the application to include the date and signature of the designated broker, or authorized branch office manager, or authorized designee under A.R.S. § 32-2127 (D), if the renewal is for an active license. If the renewal is signed by the authorized representative, if signed by a branch manager or designee, the branch manager or designee shall attach a copy of the authorization or designation shall be attached;
- d. The signature of the applicant, attesting to the truthfulness of the application information;
- e. A completed certification questionnaire, providing details and supporting documents for any affirmative response not previously disclosed in writing to the Department concerning judgments, orders, professional licenses, or convictions, as required ~~by~~ under R4-28-301(A);
- f. To renew as designated broker for an employing broker, the designated broker shall complete and submit a signed Broker Supervision & Control Audit Declaration for the sole proprietorship or entity on whose behalf the broker acts as designated broker. The completed declaration shall:
  - i. Be dated and filed before or with the broker's renewal application, and submitted to the Department no earlier than 90 days before the broker's license expiration date;
  - ii. Be in the form prescribed by the Department;
  - iii. State the broker's compliance or non-compliance with, or the non-applicability of, specified statutes and rules; and
  - iv. Identify all of the broker's property management and trust accounts.

**B.** Late renewal. In addition to the information required in subsection (A), any person applying for a ~~late renewal after the date of license expiration~~ shall specify whether the person conducted unlawful license activities as described in R4-28-306, requiring a license were conducted after license expiration or without proper employment by a broker.

**C.** ~~Unlicensed activity.~~ A person who has conducted activities requiring a current and active license while not properly licensed shall, upon request, submit:

- 1. ~~A copy of any offer or contract to sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts;~~
- 2. ~~A written explanation of why the unlicensed activity occurred, attesting that there are no unreported transactions;~~
- 3. ~~A copy of all listing agreements, buyer-broker employment agreements, purchase contracts, escrow settlement statements, management agreements, rental agreements, and leases executed while not properly licensed;~~
- 4. ~~Documentation listing all compensation received or to be received by the applicant, the designated broker, and the employing broker, resulting from the applicant's activities;~~
- 5. ~~The person shall attest that activities requiring a license shall not be conducted until a current and active license is issued to the person.~~

~~**D-C.**~~ No change

- 1. Any salesperson or broker applying for license reinstatement under A.R.S. § 32-2131 shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application for Reinstatement:
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. The date of the application; and
  - i. No change
- 2. If the license was active at the time of suspension, cancellation, revocation, or termination, the ~~Department may require the applicant to submit an Unlicensed Activity Form and supporting documents~~ shall provide the information required under R4-28-306.

**E.** License Changes. A salesperson or broker shall notify the Commissioner of the following information and changes:

- 1. ~~In writing or on a Change Form, whichever is appropriate:~~

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- a. The type of change being made;
  - b. The legal name, address, and telephone number of the salesperson or broker;
  - c. The prior name of the person, if changing name;
  - d. The prior address of the main or branch office, if changing address;
  - e. The salesperson's or broker's license number, expiration month, and year; and
  - f. The date of the application and signature of the salesperson or broker.
2. ~~In writing, within 10 days of the change:~~
    - a. ~~Personal name, including proof of the change;~~
    - b. ~~Personal address;~~
    - c. ~~Opening, closing, or relocation of a broker's trust account;~~
    - d. ~~A branch office closing; or~~
    - e. ~~Disclosure of certification information.~~
  3. ~~On a Change Form, within 10 days of the change:~~
    - a. ~~Active to inactive status;~~
      - i. ~~The legal name and fictitious name, if any, of the severing broker; and~~
      - ii. ~~The date and signature of the severing broker.~~
    - b. ~~The employing broker's business address;~~
    - c. ~~The business mailing address, if different than the business address;~~
    - d. ~~A transfer between employer's offices by a salesperson or associate broker;~~
    - e. ~~The appointment of temporary broker due to a designated broker's death or incapacity; or~~
    - f. ~~Branch office manager.~~
  4. ~~On a Change Form, and obtain approval from the Commissioner before conducting business. The existing license remains in effect until the application has been approved or denied.~~
    - a. ~~The broker's business name;~~
    - b. ~~The employing broker, including:~~
      - i. ~~The legal name and fictitious name, if any, of the severing and hiring brokers; and~~
      - ii. ~~The date and signatures of the severing and hiring brokers.~~
    - c. ~~Inactive to active status;~~
      - i. ~~The legal name of the hiring broker; and~~
      - ii. ~~The date and signature of the hiring broker.~~
    - d. ~~Designated broker by an entity;~~
    - e. ~~Adopting, changing, or relinquishing professional corporation or professional limited liability company license status;~~
    - f. ~~Membership of a professional corporation or professional limited liability company, or the license status of a member;~~
    - g. ~~Broker change of status to or from associate broker;~~
    - h. ~~Designated broker or entity change from resident to nonresident broker's license; or~~
    - i. ~~Designated broker or entity change from nonresident to resident broker's license.~~
  5. ~~Within 30 days of any change in structure of the licensed entity, the name of any:~~
    - a. ~~Director, officer, or person holding, or controlling 10% or more of the shares, if a corporation;~~
    - b. ~~Partner if a partnership; or~~
    - c. ~~Member or manager if a limited liability company.~~
  6. ~~If a previously issued license is not returned when making a license change, the salesperson or broker or the designated broker, if applicable, shall submit a written statement explaining why the previous license is not being returned.~~
- D.** A salesperson or broker shall notify the Department in writing within 10 days of any change in the individual's personal information or qualifications. The salesperson or broker shall include in the notice the individual's name, signature, license number, and:
1. If disclosing information required under R4-28-301, such as a criminal conviction, adverse judgment, denial or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's behalf, a written statement providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301(A)(2);
  2. If requesting a change of personal name, written notice stating the prior name and new name, supporting documentation for the change, and applicable fee;
  3. If changing residence address or residential mailing address, written notice stating the prior address, new address and the date of the change;
  4. If changing residence telephone number or providing an additional telephone number or email address, written notice of the prior and current number or email address; or
  5. If becoming licensed as a professional corporation or professional limited liability company, or changing licensure as a professional corporation or professional limited liability company, the information required under subsection (F).

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- E. A designated broker shall notify the Department in writing within 10 days of any change in the employing broker's qualifications under R4-28-301, and shall provide notice of any proposed change in the employing broker's business information under this Section. An employing broker shall not conduct business under information described in subsections (E)(2), (3), (7), (9), (12), or (13) until the change is approved by the Department. The designated broker shall include in the notice the designated broker's name and signature, the employing broker's legal name, and:
1. If disclosing information required under R4-28-301 such as an adverse judgment, denial, or restriction of or disciplinary action against a professional or occupational license, or recovery fund payment on the person's own behalf or on behalf of any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the employing broker, file with the Department a written statement within 10 days of the occurrence, providing detailed information and, upon request by the Department, the supporting documentation identified in R4-28-301 (A)(2);
  2. If changing the employing broker's legal name, written notice stating the current name and proposed name, supporting documentation, and applicable fee;
  3. If changing the employing broker's dba name, written notice stating the current dba name, if any, the proposed dba name, and applicable fee;
  4. If changing the employing broker's physical address, changing or adding a business mailing address, or changing the address of any branch office, written notice within 10 days of the change stating the prior address and new address, return all current licenses issued to the former address, and pay the applicable fee;
  5. If changing business telephone number, written notice within 10 days of the change, providing the prior and current number. The broker may provide additional telephone numbers or email addresses;
  6. If changing the structure or membership of the employing broker as provided in A.R.S. § 32-2125 (G), written notice within 10 days of the change including supporting documentation identified in R4-28-302;
  7. If changing branch office managers at an established branch office of the employing broker, or changing the authority delegated to the branch office manager, the application form, applicable fee, and letter of authority that identifies the person appointed and specifies the duties delegated as provided by R4-28-304;
  8. If closing a branch office, a written statement informing the Department within 10 days of the closure, accompanied by the branch office license and Department form severing the employment of or transferring to another branch office each employee at the branch;
  9. If hiring a salesperson or broker, or transferring a salesperson or broker employed by the employing broker to another office of the employing broker, a change form that includes the name, license number, signature of the employee, and the branch office address where the employee will work, and applicable fee;
  10. If severing a licensee employed by the employing broker, written notice and return of the employee's license within 10 days of the severance;
  11. If opening or closing a broker's trust account, written notice within 10 days of the opening or closing that provides the name of the account, the account number, and the name and address of the bank where the account is located. If relocating or changing the name of a trust account, the designated broker shall include the information for the previous and new accounts;
  12. If appointing a temporary broker, submit the information specified in R4-28-305 and in accordance with provisions of A.R.S. §§ 32-2127 or 32-2133, as applicable; or
  13. If an employing broker is changing designated brokers, the information and documentation provided in R4-28-302 (K).
- F. In addition to the information required in subsection (E)(1) applicant's name, signature, license number, the name and address of the employing broker's office where the employee will work, and the change fee, a salesperson or associate broker shall submit the following information when the change is in a to be licensed as a professional corporation or professional limited liability company, to add or remove members of a licensed professional corporation or professional limited liability company, or to change the name of a licensed professional corporation or professional limited liability company:
1. Professional corporation.
    - a. The name of the professional corporation that includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation;
    - b. The name and business address of each officer, director, and shareholder in the corporation and a written statement that each holds a current and active real estate license; and
    - c. A copy of the Articles of Incorporation, as amended, stamped "Received and Filed" by the Arizona Corporation Commission;
      - i. The Articles of Incorporation shall state that the corporation's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.
      - ii. If more than + one year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional corpora-

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tion, the Department shall require the salesperson or associate broker to submit a certificate of Good Standing from the Arizona Corporation Commission; and

d. Evidence that membership in the professional corporation is limited to the designated broker and does not include any other person if the applicant for licensure as a professional corporation is licensed as a designated broker;

2. Professional limited liability company.

a. The name of the professional limited liability company that includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization;

b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate license;

c. A copy of the Articles of Organization, as amended, stamped "Received and Filed" by the Arizona Corporation Commission:

i. The Articles of Organization shall state that the limited liability company's sole purpose is to provide professional real estate, cemetery, or membership camping services, or real estate, cemetery, and membership camping services.

ii. If more than + one year has elapsed between the date the Articles of Organization were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional limited liability company, the Department shall require the salesperson or associate broker to submit a certificate of Good Standing from the Arizona Corporation Commission.

d. A copy of the operating agreement, as amended; and

e. Evidence that membership in the professional limited liability company is limited to the designated broker and does not include any other person if the applicant for licensure as a professional limited liability company is licensed as a designated broker.

3. To return a license from professional corporation or professional limited liability company status to individual status:

a. The name, license number, and dated signature of the salesperson or broker;

b. A written statement that the salesperson or broker no longer wishes to be licensed as a professional corporation or professional limited liability company; and

c. The change fee.

G. Administrative severance.

1. A salesperson or broker may request that the Department ~~immediately~~ sever the salesperson's or broker's license from the employing broker.

a. ~~After notifying the designated broker, the~~ The salesperson; or broker shall provide the following information on ~~a Request for Administrative Severance form or in the manner prescribed by the Department:~~

i. a. ~~The name and~~ license number, and dated signature of the applicant salesperson or broker seeking the severance; and

ii. ~~Whether the applicant is a salesperson or an associate broker,~~

iii. b. ~~The name of the employing broker from whom the license is being severed;~~

iv. ~~The reason why the applicant seeks administrative severance, and,~~

v. ~~The date and signature of the applicant.~~

b. ~~The applicant shall submit the severance form to the Department.~~

e. ~~After receipt of the severance form, the Department shall administratively sever the license and mail a copy of the severance to the employing broker.~~

2. ~~After a license has been administratively severed, another employing broker may hire the applicant by submitting a Change Form and fee. Upon receipt of the written request for severance as provided in subsection (G)(1)(a), the Department shall administratively sever the license and provide written notice to the employing broker, who shall return the severed person's license to the Department under subsection (E)(10).~~

**R4-28-304. Branch Office; Branch Office Manager**

A. ~~The~~ To obtain a branch office license, the designated broker shall submit to the Department before operating the branch office the following information for each branch office of the employing broker on the Application for Branch Office form:

1. No change

2. No change

3. No change

4. No change

5. The employing broker's ~~fictitious~~ dba name, if applicable;

6. No change

7. The name and license status of the salesperson or broker who is the branch office manager and the authority granted to the branch office manager, including any designation of authority under subsection (B).

B. Branch office manager. ~~At~~ A designated broker may authorize in writing an associate broker or salesperson; to act acting

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as a branch office manager, ~~may to perform any of the following duties of the designated broker at the branch office if authorized in writing by the designated broker.~~ This designation does not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for ~~5~~ five years.

1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
2. No change
  - a. No change
  - b. No change

C. Temporary office. An additional license is not required for a temporary office established for the original onsite sale of properties within the immediate area of a subdivision or unsubdivided land.

1. The broker named in the application for public report approval shall supervise operation of the temporary office to sell or lease the subdivided or unsubdivided land.
2. The broker shall display the subdivision or unsubdivided land name with and the licensed name of the employing broker marketing the development in a conspicuous prominent manner at the entrance to the temporary office.

**R4-28-305. Temporary License, Certificate of Convenience**

A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and applicable fee to the Department:

1. No change
2. No change
3. No change
4. No change
5. No change

B. The designated broker shall submit an affidavit ~~pursuant to~~ under A.R.S. § 32-2134 or 32-2134.01 for:

1. ~~A~~ An applicant for temporary cemetery license stating that the applicant has been trained in cemetery and contract law; or
2. ~~A~~ An applicant for a membership camping certificate of convenience stating that the applicant will be trained in membership camping and contract laws.

C. No change

1. No change
2. No change

**R4-28-306. Unlawful License Activity**

**A.** Unlawful license activity is:

1. The performance of acts requiring a license under A.R.S. § 32-2122 by a person who does not hold a current and active license;
2. The performance of acts requiring a license by a person on behalf of a broker other than the person's employing broker; or
3. A broker's employment of a person as a salesperson or broker if the person does not hold a current and active license issued to the person under that employing broker.

**B.** A person who conducts unlawful license activity shall submit to the Department, as soon as the person becomes aware that the activity has occurred, the following:

1. A written explanation of why the unlawful license activity occurred;
2. A signed statement from the person that the person will not conduct activities requiring licensure under A.R.S. § 32-2122 unless the person holds a current and active license to perform those acts;
3. A signed statement from the employing broker's designated broker, identifying all unlawful activity by the person on behalf of the employing broker;
4. Upon request by the Department:
  - a. A copy of all listing and employment agreements, offers or contract to buy, sell, lease, exchange, transfer, or manage real estate, cemetery property, or membership camping contracts prepared, negotiated or executed by the person while the person was not properly licensed under the employing broker;
  - b. Documentation listing all compensation received or to be received by the person based on transactions that

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- occurred while the person was not properly licensed:
  - c. Documentation listing all compensation received or to be received by the person's employing broker and designated broker, if any, resulting from transactions that occurred while the person was not properly licensed if not provided in response to subsection (B)(4)(b); and
  - d. A signed statement from the person stating that the information provided under subsection (B)(4) is true and complete and that the copies provided are true copies of all contracts, agreements, statements, and leases and no relevant documents are omitted.
- C.** A person who has no prior history of engaging in unlawful license activity under this Section, who conducted unlawful license activity for not more than 30 days and against whom there are no pending complaints may apply to renew the person's license or for license change to active status. The Department shall not delay processing the application based on the unlawful licensed activity. The Department shall issue an Advisory Letter of Concern to the person.
- D.** The Commissioner may take disciplinary action under A.R.S. § 32-2153 against a person who engages in unlawful license activity under this Section for longer than 30 days, has previously conducted unlawful license activity, or is the subject of a pending complaint.

ARTICLE 4. EDUCATION

**R4-28-402. Continuing Education Requirements; Waiver; Distance Learning**

- A.** Continuing education requirements.
1. Any individual applying for real estate license renewal shall complete 24 credit hours in the following categories from a real estate school that meets the requirements in R4-28-404, of which a minimum of 3 hours are completed in each of the first 5 categories: To be eligible for license renewal, a real estate salesperson or broker shall complete continuing education courses approved by the Department under R4-28-404, presented by a real estate school approved under R4-28-404, and taken since the salesperson's or broker's original licensure or effective date of the preceding license, whichever is later.
  2. A real estate salesperson or associate broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses in the categories specified in subsection (A)(5). The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
  3. A real estate designated broker applying for renewal shall submit proof of satisfactory completion of 24 credit hours of continuing education courses. The renewal applicant shall complete a minimum of three hours in each of the mandatory categories under subsections (A)(5)(a) through (A)(5)(f) and shall complete a Broker Management Clinic under A.R.S. 32-2136 approved in the Commissioner's Standards category under subsection (A)(5)(c). The renewal applicant shall take additional courses in the mandatory categories, or shall take courses in the business brokerage or general real estate categories described in subsection (A)(5)(g) and (A)(5)(h) to fulfill the required 24 credit hours.
  4. A salesperson renewing for the first time may include credit for attendance at the Contract Writing class taken under A.R.S. § 32-2124 (L) if taken within one year before the date of the salesperson's original licensure. A broker renewing for the first time may include credit for attendance at the Broker Management Clinic under A.R.S. § 32-2136 taken before the broker's original licensure date.
  5. The categories for real estate continuing education courses are:
    - a. Agency law. The majority of class material concerns agency relationships and disclosure;
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
      - v. No change
      - vi. No change
      - vii. No change
    - c. No change
      - i. No change
      - ii. No change
      - iii. No change
    - d. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change

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- v. No change
  - vi. No change
  - vii. No change
  - viii. No change
  - ix. No change
  - x. No change
  - xi. No change
  - e. No change
    - i. No change
    - ii. No change
    - iii. No change
    - iv. No change
    - v. No change
  - f. Disclosure. The majority of class material concerns the following:
    - i. Licensee's disclosure obligations to client and others;
    - ii. Seller's and buyer's disclosure obligations to each other;
    - iii. Common material facts warranting disclosure, and liability for failure to disclose;
    - iv. Avoiding inadvertent non-disclosures;
    - v. Transaction documents that should be reviewed;
    - vi. Common "red flags" in a real estate transaction;
    - vii. Homeowner associations and buyers obligations to homeowner associations; and
    - viii. Advising buyers and sellers of common "red flags."
  - g. Business brokerage. The majority of class material concerns business brokerage including:
    - i. Business brokerage basics including introducing licensees to business brokerage, associated terminology, marketing, prospecting, listing, pricing, closing practices, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts;
    - ii. Business valuations and appraisals, and establishing an in-depth review of proper business valuation techniques for small, medium, and large businesses;
    - iii. Tax structure and considerations, tax law, and policy including subjects such as financing tools available, options available, and tax implications;
    - iv. Accounting for business brokers;
    - v. Agency in business brokerages, the use of contracts related to and unique to business brokerage, and the application of business brokerage contracts; and
    - vi. Disclosure issues in business brokerage, including common "red flags" in a business opportunity transaction, and advising buyers and sellers of common "red flags."
  - f.h. General real estate. The majority of class material concerns real estate, but does not fall within any of the classifications categories listed in subsections (A)(1)(a) through (A)(1)(e); (A)(5)(a) through (A)(5)(g), including:
    - i. Appraisal methodology;
    - ii. General finance, use of financial calculators, mathematics, and managing cash flow;
    - iii. History of development in metropolitan areas; and
    - iv. Introduction to property management.
- 2-6. The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community. The Department shall notify licensees of a new requirement by written notice published in printed or electronic format.
- 3-7. Continuing The Department may grant continuing education credit may be granted for an unapproved a course that does not have a certificate of approval under R4-28-404 if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the requirements prescribed in R4-28-404 and the course content requirements of this Section.
- 4-8. An applicant may substitute The equivalent subject matter hours within a 90-hour broker's preclicensure course that meet the criteria for credit under subsections (A)(5)(a) through (A)(5)(h), if taken since the last license renewal, may be substituted for the 24 hours of continuing education credit required in subsection (A)(1)(2) or (3).
- 5-9. If any change in the continuing education course requirements falls within occurs during a renewal applicant's license period the renewal applicant may fulfill the continuing education requirements by satisfying the requirements in effect at the beginning or the end of the license period, and the applicant has fully complied with the continuing education requirement in effect before the change occurs, the Department shall consider the renewal applicant to be in compliance with the continuing education requirements for the license period.
- B. Continuing education waiver. Under A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement or grant additional time to complete a continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver or additional time.

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1. Pursuant to A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good Good cause for the waiver may include. For example:
  - a. No change
  - b. No change
  - c. A substitution for education is demonstrated The person demonstrates successful completion of a course on topics specifically related to the person's field of real estate practice.
  - d. No change
  - e. Any The salesperson or broker demonstrates other extraordinary circumstance circumstances exists or is demonstrated.
2. ~~If the Commissioner grants a salesperson or broker additional time to complete the continuing education hours under a conditional waiver, the~~ A salesperson or broker is granted additional time by the Commissioner to complete the continuing education requirement for license renewal shall complete the continuing education hours within the time-frame prescribed in the waiver, unless additional time is granted by the deadline or be subject to disciplinary action.
- C. A person The Department shall not ~~receive~~ grant a person credit for more than ~~9~~ nine hours of continuing education classes per day.
- D. Distance learning.
  1. ~~The Department shall approve a distance learning course before credit is issued.~~
  2. Only a school holding a Certificate of Approval shall offer a distance learning course. The school shall obtain course approval from the Department before advertising the course as approved by the Department for credit hours and before issuing Department credit hours for the course to students.
  3. ~~A~~ The Department shall not approve a distance learning course shall contain the following: unless it contains:
    - a. No change
    - b. No change
    - c. No change
    - d. A diagnostic assessment of the student's performance during each module of instruction;
      - i. No change
      - ii. Assess the comprehension of each concept covered in the module; and
    - e. Remediation.
      - i. Repetition of a module if a student is deficient in a diagnostic assessment; and
      - ii. No change
  3. An approved instructor ~~shall teach or~~ and an approved instructor or the school ~~coordinator or~~ director shall ~~teach and~~ grade distance learning courses. The instructor, ~~or school coordinator, or~~ director shall:
    - a. No change
    - b. No change
    - c. Certify the student as completing a distance learning course only if the student:
      - i. No change
      - ii. Attends any required hours of live instruction or testing, or both, for a given course; and
      - iii. No change
  4. ~~If the distance learning course is computer-based, the~~ As part of its application for approval of a distance learning course, a school shall file a plan with the Department describing how ~~it~~ the school will deal with hardware and software failure.

**R4-28-405. Business Brokerage Specialist Designation**

- A.** The Department shall award the business brokerage specialist designation under A.R.S. § 32-2124(N) to a real estate salesperson or broker or an applicant for licensure as a real estate salesperson or broker who submits to the Department satisfactory proof that the licensee or applicant completed 24 credit hours of courses on business brokerage, approved by the Department under R4-28-404, as follows:
  1. Either two 12-hour courses or three eight-hour courses that contain instruction on business brokerage practices, review and analysis of financial statements, including recasting, and business valuation; and
  2. The applicant passes an examination on each course.
- B.** A real estate salesperson or broker may request the designation from the Department by submitting to the Department satisfactory proof from the International Business Broker Association of having taken the courses and passed the course examinations described in subsection (A) within the five years before the request.

**ARTICLE 5. ADVERTISING**

**R4-28-502. Advertising by a Licensee**

- A.** A salesperson or broker acting as an agent shall not advertise property in a manner ~~which~~ that implies that no salesperson or broker is taking part in the offer for sale, lease, or exchange.
- B.** Any salesperson or broker advertising the salesperson's or broker's own property for sale, lease, or exchange shall dis-

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close the salesperson's or broker's status as a salesperson or broker, and as the property owner by placing the words "owner/agent" in the advertisement.

- C. A salesperson or broker shall ensure that all advertising contains accurate claims and representations, and fully states factual material relating to the information advertised. A salesperson or broker shall not misrepresent the facts or create misleading impressions.
- D. ~~Any~~ A school shall include its name, address and telephone number in all advertising of Department-approved courses ~~shall include the school name, address, and telephone number. The school owner, director, or administrator shall supervise all advertising.~~ The school owner shall ensure that the school's advertising is accurate.
- E. A salesperson or broker shall ensure that all advertising shall include identifies in a clear and prominent manner either the name in which the employing broker's legal name license is held or the fictitious dba name contained on the employing broker's license certificate. The lettering used for the name of the employing broker shall appear in a clear and conspicuous manner.
- F. A licensee who advertises property that is the subject of another person's real estate employment agreement shall display the name of the listing broker in a clear and prominent manner.
- ~~F.G.~~ The designated broker or the school owner shall supervise all advertising as applicable for real estate, cemetery, or membership camping brokerage services.

~~G.H.~~ No change

~~H.I.~~ No change

~~I.J.~~ The provisions of subsections (E) and (F) (G) shall do not apply to advertising done by any franchisor or franchisee if the advertising that does not refer to specific real estate property.

~~J.K.~~ Trade Names.

- 1. No change
- 2. The broker shall include the following legend, "Each (TRADE NAME or FRANCHISE) office is independently owned and operated," or a similar legend approved by the Commissioner, shall be used in a manner to attract the attention of the public.

~~K.~~ A real estate salesperson or broker may use the terms "team" or "group" to advertise and promote real estate services if those terms do not constitute the use of a trade or d.b.a. name, and all of the following are true:

- 1. The team or group is comprised of real estate salespersons or brokers;
- 2. The team or group members are employed by the same employing broker;
- 3. The designated broker maintains and files with the Department a current list of all members of each group or team in the broker's employ, and
- 4. The advertising otherwise complies with statutes and rules.

L. The use of an electronic media medium, such as the Internet or web site technology, which targets Arizona that targets residents of this state with the offering of a property interest or real estate brokerage services pertaining to property located in this state constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

**R4-28-503. Promotional Activities**

- A. ~~Licensees~~ A licensee shall not describe a premium offered at no cost or reduced cost to promote sales or leasing as an "award," or "prize," or use a similar term.
- B. ~~The~~ A licensee shall clearly disclose to a person in writing the terms, costs, conditions, restrictions, and expiration date of an offer of a premium shall be clearly disclosed in writing before the offeree person participates in the offer.
- C. Unless otherwise provided by law, a person shall not solicit, sell, or offer to sell an interest in a development by conducting a lottery contest, drawing, or game of chance ~~to influence a purchase or prospective purchaser.~~
- D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance, or award a premium under A.R.S. § 32-2197.17(J), by submitting to the Department; ~~the information required in~~ under A.R.S. §§ 32-2183.01(I), 32-2197.11(F) 32-2197.17 (J) or 32-2198.10(D), the applicable fee, if any, and:
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change

**R4-28-504. Development Advertising**

- A. ~~If the a developer has obtained~~ obtains a conditional sales exemption, ~~pursuant to under~~ under R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations ~~pursuant to under~~ under A.R.S. § 32-2181.03, the developer shall disclose on all advertising that only reservations or conditional sales contracts will be taken until the public report has been issued.
- B. Only a developer or the developer's authorized representative shall file advertising for a development under A.R.S. §§ 32-

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- 2183.01(A), 32-2194.05(A), 32-2195.05(A), 32-2197.17(A) or 32-2198.01(A)(6) with the Department.
- C. ~~Any~~ A developer shall ensure that advertisement of property in a development ~~shall include~~ includes the name of the development as registered with the Department. The Commissioner may waive application of this subsection if the Commissioner determines that the public interest is not affected.
  - D. A developer shall not advertise a monthly payment, total price, or interest rate that is not available to all prospective purchasers or is restricted, ~~is prohibited~~ unless the lack of availability or the restriction is conspicuously disclosed to all prospective purchasers within the advertisement ~~to all prospective purchasers~~.
  - E. A developer shall not advertise proposed or incomplete improvements unless ~~both subsections (E)(1) and (2) have been~~ the following requirements are met:
    1. The estimated date of completion is specified or, if there is no estimated date of completion, the developer includes a prominent disclosure ~~is made~~ in the advertisement that the improvement is proposed only and no warranty is given or implied that the improvement will be completed; ~~and~~
    2. If a completion date is specified, the developer has submitted to the Department ~~sufficient~~ evidence ~~has been presented~~ to satisfactorily demonstrate to the Department that the completion and operation of the facilities are assured and that completion will be within the time represented in the advertisement or promotional material.
  - F. ~~Reference to~~ The developer shall not reference a proposed public facility or project that purports to effect the value or utility of an interest in a development ~~shall not be made~~ without ~~written disclosure of~~ disclosing in writing the existing status of the proposed facility. The developer shall base the disclosure ~~shall be based~~ upon information supplied or verified by the authority responsible for the public facility or project and ~~shall forwarded forward the information~~ to the Department.
  - G. No change
  - H. No change
  - I. No change
  - J. A developer shall not ~~express~~ expressly state or imply that a facility is available for the exclusive use of purchasers of lots or interests if a public right of access or public use of the facility exists.
  - K. A developer shall not refer to availability for use of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of an interest in the development unless a disclosure is made in the advertisement. The disclosure shall ~~verify~~ affirmatively state the existence of the facilities, ~~indicating~~ and that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.
  - L. No change
  - M. ~~When any~~ At the time an incentive is offered to visit any place where a sales presentation for a development is to be made and before the recipient of the incentive makes the trip, the developer shall disclose in writing all conditions, limitations, or recipient qualifications that will be applied ~~before the recipient makes the trip~~.
  - N. ~~Advertising~~ A developer shall not include in advertising testimonials or endorsements ~~which that~~ contain statements that a licensee salesperson or broker would be precluded; by law ~~or rule~~, from making on the licensee's salesperson's or broker's behalf.

ARTICLE 8. DOCUMENTS

**R4-28-803. Contract Disclosures**

- A. ~~Any~~ A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development that requires a public report ~~shall contain~~ contains substantially the following language in bold print or print larger than the other print used in the document above the signature portion of the document:

THE DEVELOPER SHALL GIVE A PROSPECTIVE PURCHASER SHALL BE GIVEN A COPY OF THE PUBLIC REPORT AND AN OPPORTUNITY TO READ AND REVIEW IT BEFORE SIGNING THE PROSPECTIVE PURCHASER SIGNS THIS DOCUMENT.
- B. ~~Any~~ A developer or the developer's agent shall ensure that any agreement or contract for the sale or lease of a property interest in a development ~~shall~~ conspicuously ~~diselose~~ discloses the nature of the document at or near the top of the document.
- C. No change
- D. No change

**ARTICLE 10. ~~FRANCHISES AND FICTITIOUS NAMES~~ REPEALED**

**R4-28-1001. Fictitious Names Repealed**

- ~~A.~~ A broker shall not have or use a name similar to that of any broker already authorized that would cause uncertainty or confusion. ~~If there is a conflict of names between 2 brokers, the Commissioner shall require the broker to supplement or modify the broker's name.~~
- ~~B.~~ A person shall not be licensed as a broker under more than 1 fictitious name, and a person shall not conduct or promote a brokerage business unless the person uses the name under which the person or brokerage is licensed, except that a broker authorized to conduct business as a franchisee may use both the approved franchise name and the broker's fictitious name as licensed.

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- ~~C. A professional corporation or professional limited liability company licensed pursuant to A.R.S. § 32-2125(B) shall not adopt a fictitious name.~~

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties to Client

- A. No change
- B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information which the licensee possesses that materially ~~and~~ or adversely affects the consideration to be paid by any party to the transaction, including:
1. Any information that the seller or lessor is or may be unable to perform;
  2. Any information that the buyer or lessee is, or may be, unable to perform;
  3. Any material defect existing in the property being transferred; and
  4. The ~~possible~~ existence of a lien or encumbrance on the property being transferred.
- C. A licensee shall expeditiously perform all acts ~~resulting from an agreement authorized~~ required by the holding of a license. ~~Any A licensee shall not delay in performance, either intentional intentionally or through neglect, is prohibited.~~
- D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or interfere with the initiation, processing, or finalizing of a transaction on behalf of a client. This prohibition does not obligate a licensee to agree to alter the terms of any employment or compensation agreement or to relinquish the right to maintain an action to resolve a controversy.
- E. No change
1. No change
  2. No change
  3. No change
  4. No change
- F. No change
- G. No change
- H. No change
- I. A salesperson or broker shall exercise reasonable care in ensuring that the salesperson or broker obtains information material to a client's interests and relevant to the contemplated transaction is obtained and accurately communicated communicates the information to the client. A salesperson or broker is not required to have expertise in subject areas other than those required to obtain the salesperson's or broker's license. A salesperson or broker shall take reasonable steps to assist a client in confirming the accuracy of information relevant to the transaction.
- J. No change
1. No change
  2. No change
- K. A salesperson or broker shall recommend to a client that the client seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of a property.

R4-28-1103. Broker Supervision and Control

- A. An employing broker and a designated broker shall exercise reasonable supervision and control over the activities of brokers, salespersons, and others in the employ of the broker. Reasonable supervision and control includes the establishment and enforcement of written policies, ~~rules~~, procedures, and systems to:
1. Review and manage:
    - a. No change
    - b. Use of disclosure forms and contracts and, if a real estate broker, real estate employment agreements under A.R.S. § 32-2151.02;
  2. No change
    - a. No change
    - b. No change
    - c. No change
  3. No change
  4. No change
  5. No change
- B. A broker shall establish a system for monitoring compliance with statutes, rules, and the broker's policies, ~~rules~~, procedures, and systems. ~~A broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of employees of the broker.~~
- C. A designated broker shall supervise associate brokers, salespersons, and employees of the employing broker and shall exercise reasonable supervision and control over activities by the employing broker for which a license is required.
- D. An employing broker is responsible for the acts of all associate brokers, salespersons, and other employees acting within the scope of their employment.

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- E. A designated broker may use the services of employees to assist in administering the provisions of this Section but shall not relinquish overall responsibility for supervision and control of the acts of the employing broker's employees.
- F. A designated broker who, upon learning of a violation of real estate statutes or rules by a salesperson or associate broker under the broker's supervision, immediately reports the violation to the Department is not subject to disciplinary action by the Department for failure to supervise the salesperson or broker.

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY,  
OR SPECIAL ORDER OF EXEMPTION

**R4-28-A1215. Development Sales**

The applicant shall provide a description of the sales offering and:

1. No change
2. No change
3. Indicate where the purchaser's deposit and earnest monies will be deposited and held;
4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be ~~released~~ refunded;
5. No change
6. No change
7. No change
8. No change
  - a. No change
  - b. No change
  - c. No change
9. No change
10. No change
11. No change
12. No change

ARTICLE 13. ADMINISTRATIVE PROCEDURES

**R4-28-1303. Information Obtained in an Investigation**

- A. The Department shall ensure that any information or document and documents obtained in an examination open audits or investigation remains and investigations remain confidential, unless made a matter of public record. Officers and employees of the Department shall not make confidential information or documents available to anyone other than the Attorney General or the Attorney General's representative, or a member, officer, or employee authorized employees of the Department, unless the Commissioner authorizes disclosure of the information or production of documents as not being contrary to in the public interest.
- B. Upon request, the Department shall disclose the existence of and make available for review audit and investigative files that were closed within five years of the request for the information, subject to redaction of confidential or privileged information such as date of birth, social security number, bank and trust account numbers, home address and telephone number of active-status licensees, criminal history reports, attorney-client privileged communications, work product, and information regarding settlement negotiations.

**R4-28-1310. Rehearing or Review of Decision; Response; Decision**

- A. Unless otherwise provided by law statute or rule, any party to a hearing before the Department Office of Administrative Hearings who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file with the Commissioner a written motion for rehearing or review of the decision. The motion shall specify the particular grounds for rehearing or review. The moving party shall serve copies upon all other parties. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Commissioner rules upon the motion.
- B. A rehearing or review of the decision may be granted for any ~~+~~ one of the following causes which that materially affect the moving party's rights:
  1. Irregularity in the proceedings or any order or abuse of discretion by the administrative law judge, ~~which that~~ deprived a party of a fair hearing;
  2. No change
  3. Accident or surprise ~~which that~~ could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence ~~which that~~ could not with reasonable diligence have been discovered and produced at the original hearing;
  5. No change
  6. No change
  7. No change

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- 8. No change
- C. Presenting-specific grounds for rehearing or review, affidavits and relief sought:
  - 1. Each party filing a motion for rehearing or review shall specify in the motion which of the grounds listed in subsection (B) ~~is~~ the motion is based upon and shall set forth specific facts and law in support of the rehearing or review. ~~Each motion~~ The party may cite relevant portions of testimony by reference to pages or lines of the reporter’s transcript of the hearing or to the date and time range of the Office of Administrative Hearings audio record, and may cite hearing exhibits by reference to the exhibit number.
  - 2. When a party files a motion for rehearing or review ~~is~~ based upon an affidavit, ~~it~~ the person shall ~~be attached~~ attach the affidavit to and filed with the motion before filing the motion unless leave for later filing of an affidavit is granted by the Commissioner. The leave may be granted ex parte.
  - 3. Each party filing a motion for rehearing or review shall specify the specific relief sought by the motion, such as a different decision or penalty, a new hearing, a dismissal of the complaint, or other relief. A ~~motion for rehearing or review~~ party may seek multiple forms of relief, in the alternative.
- D. No change
- E. No change
- F. No change

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSING

[R05-14]

PREAMBLE

- 1. Sections Affected**

R9-10-201	Amend
R9-10-203	Amend
R9-10-204	Amend
R9-10-206	Amend
R9-10-208	Amend
R9-10-209	Amend
R9-10-212	Amend
R9-10-213	Amend
R9-10-218	Amend
R9-10-219	Amend
R9-10-220	Amend
R9-10-222	Amend
R9-10-228	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
  - Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(F)
  - Implementing statutes: A.R.S. §§ 36-405 and 36-406
- 3. The effective date of the rules:**
  - March 5, 2005
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
  - Notice of Rulemaking Docket Opening: 10 A.A.R. 1716, April 30, 2004
  - Notice of Proposed Rulemaking: 10 A.A.R. 1665, April 30, 2004
  - Notice of Proposed Rulemaking: 10 A.A.R. 2220, June 4, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
  - Name: Kathleen Phillips, Rules Administrator
  - Address: Arizona Department of Health Services  
1740 W. Adams, Suite 202  
Phoenix, AZ 85007
  - Telephone: (602) 542-1264

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Fax: (602) 364-1150  
E-mail: phillik@azdhs.gov  
or  
Name: Kathy McCanna, Program Manager  
Address: Arizona Department of Health Services  
150 N. 18th Ave., Suite 450  
Phoenix, AZ 85007  
Telephone: (602) 364-2841  
Fax: (602) 364-4764  
E-mail: mccannk@azdhs.gov

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

A.R.S. § 36-132(A) requires the Arizona Department of Health Services (Department) to license and regulate health care institutions in Arizona. A.R.S. § 36-405(A) requires the Director of the Department to adopt rules establishing minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. It further requires that the standards and requirements relate to the construction, equipment, sanitation, staffing for medical, nursing, and personal care services, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(A) also requires that the Director use the current standards adopted by the Joint Commission on Accreditation of Hospitals and the Commission on Accreditation of the American Osteopathic Association or those adopted by any recognized accreditation organization approved by the Department as guidelines in prescribing minimum standards and requirements.

The Department promulgated rules that became effective October 1, 2002 for hospitals, a classification of health care institutions. After the rules were implemented, the Department and affected stakeholders identified technical or clarifying changes that needed to be made to the rules. The Department established a task force to review and discuss changes to the rules. Based on the recommendations from the task force, the Department submitted a notice of proposed rulemaking to the Secretary of State that was published in the Arizona Administrative Register on June 20, 2003. During the comment period several additional issues were identified. Subsequently, a supplemental proposed rulemaking was submitted and published on December 12, 2003. Additional issues were again identified that would require another supplemental proposed rulemaking. Because the Department determined that making another supplemental proposed rulemaking would be too confusing, the Department decided to terminate the rulemaking and submit a notice of proposed rulemaking, published on April 30, 2004, as stated in paragraph 4, that includes the changes previously identified as a result of the comment period for the terminated rulemaking. This rulemaking does not change the tuberculosis testing requirements currently in effect. A second notice of proposed rulemaking, published on June 4, 2004, as stated in paragraph 4, was necessary due to editorial errors in the first publication of the notice of proposed rulemaking.

**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:**

None

**8. A showing of good cause why the rules are 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 Department, licensed hospitals, and hospital patients will bear any costs associated with the rules. Because the rules require additional policies and procedures and additions to a hospital's quality management plan and to staff orientation, the hospital may incur a one-time cost for development and minimal costs for implementation of the new requirements. The Department may experience an increase in survey time for Department personnel to review the additional policies and procedures. In addition, hospitals may experience an increase in staffing costs due to changes in the acuity system and in the nurse-to-patient ratio for patients who receive intensive care services. The hospitals may choose to pass along those costs to hospital patients.

The rules will provide a benefit to the Department, licensed hospitals, nurses, and hospital patients. The rules provide for clarification that will make it easier for hospital personnel to comply with the rules and easier for Department personnel to survey and determine compliance with the rules. Nurses may benefit from a decrease in patient assignments and stress associated with inadequate staffing. Nurse staffing based on acuity as well as increased nurse-to-patient ratio for intensive care patients will have a positive effect on patient health and safety and help decrease the incidence of negative patient outcomes. In addition, the rules provide more flexibility for special hospitals providing patients

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with clinical laboratory services, radiology, and diagnostic imaging services and more staff flexibility for hospitals with nurseries providing care to neonates receiving no treatment.

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

The Department changed R9-10-204(B)(1)(e) from:

A method to identify, document, and evaluate occurrences of exceeding licensed capacity, as described in R9-10-203(C)(5), including the actions taken for resolving occurrences of exceeding licensed capacity;

to:

A method to identify and document each occurrence of exceeding licensed capacity, as described in R9-10-203(C)(5), and to evaluate the occurrences of exceeding licensed capacity, including the actions taken for resolving occurrences of exceeding licensed capacity.

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

Rule	Comments received	Department's response
R9-10-204(B)(1)(e)	Five written comments and one oral comment requesting that the word "aggregate" be added to clarify the rule.	The Department believes that each occurrence of exceeding licensed capacity needs to be identified and documented. Additionally, the hospital needs to evaluate the occurrences of exceeding licensed capacity as a whole to determine if there is a pattern or trend that can be corrected. If each occurrence of exceeding licensed capacity is not identified and documented, there will be nothing to evaluate. After reevaluating the rule, the Department changed the rule to read "A method to identify and document each occurrence of exceeding licensed capacity, as described in R9-10-203(C)(5), and to evaluate the occurrences of exceeding licensed capacity including the actions taken for resolving occurrences of exceeding licensed capacity."
R9-10-204(B)(3)	One written comment and one oral comment supporting the rule.	The Department appreciates the support.
R9-10-206(2)	Three written comments and one oral comment supporting the rule.	The Department appreciates the support.
R9-10-206(4)	One written comment and one oral comment supporting the rule.	The Department appreciates the support.
R9-10-208(C)(1-3)	Three written comments and four oral comments supporting the rule.	The Department appreciates the support.

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<p>R9-10-208(C)(4)</p>	<p>Two written comments and three oral comments supporting the rule.</p> <p>Three written comments requesting that the rule be applied with flexibility and not to penalize the hospital if the hospital is making reasonable efforts to correct the situation.</p> <p>Seven written comments requesting that the rule require nurses in emergency departments and PACU be assigned to patients according to acuity.</p> <p>One written comment requesting that the rule be revised to require policies and procedures to provide for additional staffing as needed rather than requiring nursing personnel according to the specific rules for the organized service in this Chapter if the licensed capacity in an organized service is exceeded or patients are kept in areas without licensed beds.</p>	<p>The Department appreciates the support.</p> <p>The Department recognizes that unforeseen circumstances may occur that may cause the hospital to temporarily have fewer nurses than required but the Department expects the hospital to implement policies and procedures to ensure that the needs of the patients, as required in R9-10-206(1) and R9-10-220(B)(6), are met at all times and there are policies and procedures implemented to obtain sufficient nursing staff to meet the staffing requirements in 9 A.A.C. 10, Article 2 a timely manner.</p> <p>A patient is admitted to an ICU because the patient is ill enough to require continuous monitoring and multi-system assessment and may need complex and specialized rapid intervention. A patient that requires ICU services will need ICU services whether the patient is located in the ICU or in the emergency department. The current standard of care, as stated by one commenter during the oral proceeding, is that there is at least one registered nurse for every 2 ICU patients to ensure that a specially trained nurse is available and able to provide the continuous monitoring and rapid intervention. Often, based on the medical needs of the ICU patient, the ratio may be 1 nurse to a patient or even 2 nurses to a patient. By identifying a patient as an ICU patient the hospital has established the level of care the patient requires to protect the health and safety of the patient and the standards for providing that level of care are set out in the specific rules for ICU in R9-10-220.</p> <p>The Department believes that it is necessary to have sufficient nursing personnel in order to ensure the health and safety of patients in a hospital. A hospital is required to determine a patient's acuity, need for nursing services, and to ensure that there are sufficient nursing personnel to meet the patient's need for nursing services. The Department recognizes that there will be periods of time when a hospital temporarily will not have the nursing personnel necessary to meet the patients' acuity. The hospital is required to have and implement policies and procedures to obtain sufficient nursing personnel in addition to ensuring that the patient's health and safety are not endangered. The Department does not believe that requiring a hospital to have policies and procedures to provide for additional staffing as needed is sufficient to ensure the health and safety of the hospital's patients.</p> <p>The Department is not changing the rule as a result of these comments.</p>
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<p>R9-10-209(A)(3)</p>	<p>Two written comments supporting the rule that requires a hospital to provide a description of health care directives for inpatients and outpatients undergoing invasive procedures.</p> <p>Four written comments stated that providing a description of the hospital's health care directives policies and procedures to a patient before the start of a planned series of treatment places an unnecessary burden on hospitals and may create unnecessary fear for patients.</p> <p>One written comment requesting clarification of the level of detail required in the description of hospital's policies and procedures provided to patients.</p>	<p>The Department appreciates the support.</p> <p>Current rule requires all patients to be informed of the hospital's health care directives policies and procedures. The new rule requires the hospital to provide a description of the hospital's health care directives policies and procedures to inpatients, outpatients undergoing invasive procedures, and outpatients at the beginning of a series of treatments and thus the burden on the hospital is actually decreased. Some patients receiving a series of treatments are very ill and it is necessary for them to be aware of the hospital's health care directives policies and procedures. The Department believes that the new rule is necessary to ensure patients receiving invasive procedures or a series of treatments as well as inpatients receive a description of and are aware of the hospital's health care directives policies and procedures.</p> <p>The Department feels that the requirement for a description of the hospital's health care directives policies and procedures are sufficient and necessary to allow for the variance that may be contained in different facilities' policies and procedures.</p> <p>The Department is not changing the rule as a result of these comments.</p>
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<p>R9-10-220(B)(5)</p>	<p>Two written comments and two oral comments supporting the rule.</p> <p>One written comment requesting that hospitals located in rural communities be allowed to staff an intensive care unit with 1 nurse to every 3 patients in an intensive care unit for limited periods.</p> <p>Two written comments requesting leniency in rural areas when enforcing the rule.</p>	<p>The Department appreciates the support.</p> <p>A patient is admitted to an ICU because the patient is ill enough to require continuous monitoring and multi-system assessment and may need complex and specialized rapid intervention. The current standard of care, as stated by one commenter during the oral proceeding, is that there is at least one registered nurse for every 2 ICU patients to ensure that a specially trained nurse is available and able to provide the continuous monitoring and rapid intervention. Often, based on the medical needs of the ICU patient, the ratio may be 1 nurse to a patient or even 2 nurses to a patient. By identifying a patient as an ICU patient the hospital has established the level of care the patient requires to protect the health and safety of the patient and the standards for providing that level of care are set out in the specific rules for ICU in R9-10-220.</p> <p>The Department recognizes that unforeseen circumstances may occur that may cause the hospital to temporarily have fewer nurses than required, but the Department expects the hospital to implement policies and procedures to ensure that the needs of the patients, as required in R9-10-206(1) and R9-10-220(B)(6), are met at all times and there are policies and procedures implemented to obtain sufficient nursing staff to meet the staffing requirements in 9 A.A.C. 10, Article 2 in a timely manner.</p> <p>The Department is not changing the rule as a result of these comments.</p>
<p>R9-10-220(B)(9)</p>	<p>One written comment requesting that the rule be revised to state “Nurses assigned to an intensive care unit are qualified in advanced cardiopulmonary resuscitation specific to the age of the patients in the intensive care unit.”</p> <p>One oral comment requesting that the rule be revised to state “The patient in an intensive care unit is under the direct care and supervision of at least one registered nurse qualified in advanced cardiopulmonary resuscitation.”</p>	<p>The Department does not believe that it is necessary for all nurses working in ICU to be certified in advanced cardiopulmonary resuscitation. The Department believes the requirement that at least one registered nurse providing care to an ICU patient be certified in advanced cardiopulmonary resuscitation ensures the health and safety of the ICU patient while allowing a hospital to use other registered nurses in an ICU to supplement the care of the ICU patient.</p> <p>The Department believes the rule is clear as written and does not require any change.</p> <p>The Department is not changing the rule as a result of these comments.</p>

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

Not applicable

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

Not applicable

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

No

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTIONS: LICENSURE**

**ARTICLE 2. HOSPITALS**

Section

R9-10-201.	Definitions
R9-10-203.	Administration
R9-10-204.	Quality Management
R9-10-206.	Personnel
R9-10-208.	Nursing Services
R9-10-209.	Patient Rights
R9-10-212.	Transport
R9-10-213.	Transfer
R9-10-218.	Clinical Laboratory Services and Pathology Services
R9-10-219.	Radiology Services and Diagnostic Imaging Services
R9-10-220.	Intensive Care Services
R9-10-222.	Perinatal Services
R9-10-228.	Medical Records

**ARTICLE 2. HOSPITALS**

**R9-10-201. Definitions**

No change

1. No change
2. No change
3. “Acuity” means a determination of the level and type of nursing services, based on the patient’s illness or injury, that are required to meet the needs of the patient a patient’s need for hospital services based on the patient’s medical condition.
4. “Acuity plan” means a method for establishing nursing personnel requirements by unit based on a patient’s acuity.
- ~~4.~~ 5. No change
- ~~5.~~ 6. No change
- ~~6.~~ 7. No change
- ~~7.~~ 8. No change
- ~~8.~~ 9. No change
- ~~9.~~ 10. “Assessment” means an analysis of a patient’s current medical condition and need for hospital services.
- ~~10.~~ 11. No change
12. “Attending physician’s designee” means a physician, physician assistant, registered nurse practitioner, or medical staff member who has clinical privileges and is authorized by medical staff bylaws to act on behalf of the attending physician.
- ~~11.~~ 13. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- ~~12.~~ 14. No change
  - a. No change
  - b. No change
  - c. No change

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- 13- 15. No change
- 14- 16. No change
- 15- 17. No change
- 16- 18. No change
- 17- 19. No change
- 18- 20. No change
- 19- 21. No change
- 20- 22. No change
- 21- 23. No change
- 24. “Critically ill inpatient” means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
  - a. Continuous monitoring and multi-system assessment.
  - b. Complex and specialized rapid intervention, and
  - c. Education of the patient or patient’s representative.
- 22- 25. No change
- 23- 26. No change
- 24- 27. No change
- 25- 28. No change
- 26- 29. No change
- 27- 30. No change
- 28- 31. No change
- 29- 32. No change
- 30- 33. No change
- 31- 34. No change
- 32- 35. No change
- 33- 36. No change
- 34- 37. No change
- 35- 38. No change
- 36- 39. No change
- 37- 40. No change
- 38- 41. No change
- 39- 42. No change
- 40- 43. No change
- 41- 44. No change
- 42- 45. No change
- 43- 46. No change
- 44- 47. No change
- 45- 48. No change
- 46- 49. No change
- 47- 50. No change
- 48- 51. No change
- 49- 52. No change
- 50- 53. No change
- 51- 54. No change
  - a. No change
  - b. No change
- 52- 55. No change
- 53- 56. “Intensive care services” means hospital services provided to ~~an~~ a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in hospital policies and procedures.
- 54- 57. No change
- 55- 58. No change
  - a. No change
  - b. No change
- 56- 59. No change
- 60. “Medical condition” means the state of a patient’s physical or mental health, including the patient’s illness, injury, or disease.
- 57- 61. No change
- 58- 62. No change
- 59- 63. No change

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- ~~60-64~~. No change  
~~61-65~~. No change  
~~62-66~~. No change  
~~63-67~~. No change  
~~64-68~~. No change  
    a. No change  
    b. No change  
~~65-69~~. No change  
~~66-70~~. No change  
~~67-71~~. No change  
~~68-72~~. No change  
~~69-73~~. No change  
~~70-74~~. No change  
~~71-75~~. No change  
~~72-76~~. No change  
~~73-77~~. "Order" means an instruction to provide medical services, as authorized by the governing authority, to a patient by:  
    a. A medical staff member;     
    b. An individual licensed under A.R.S. Title 32 or authorized by a hospital within the scope of the individual's license;    or  
    c. A physician who is not a medical staff member.  
~~74-78~~. No change  
~~75-79~~. No change  
~~76-80~~. No change  
    a. No change  
    b. No change  
~~77-81~~. No change  
~~78-82~~. No change  
~~79-83~~. No change  
~~80-84~~. "Patient Patient's representative" means a patient's legal guardian, an individual acting on behalf of a patient with the written consent of the patient, or a surrogate as defined in A.R.S. § 36-3201.  
~~81-85~~. No change  
~~82-86~~. No change  
~~83-87~~. No change  
~~84-88~~. No change  
    a. No change  
    b. No change  
~~85-89~~. No change  
~~86-90~~. No change  
~~87-91~~. No change  
~~88-92~~. No change  
~~89-93~~. No change  
~~90-94~~. No change  
~~91-95~~. No change  
~~92-96~~. No change  
~~93-97~~. No change  
~~94-98~~. No change  
~~95-99~~. No change  
~~96-100~~. No change  
~~97-101~~. No change  
~~98-102~~. No change  
~~99-103~~. No change  
~~100-104~~. No change  
~~101-105~~. No change  
~~102-106~~. No change  
~~103-107~~. No change  
~~104-108~~. No change  
~~105-109~~. No change  
    a. No change  
    b. No change

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~~106.~~ 110. No change

~~107.~~ 111. No change

~~108.~~ 112. No change

a. No change

b. No change

c. No change

~~109.~~ 113. No change

~~110.~~ 114. "Transfer" means a hospital discharging a patient and sending the patient to another hospital for inpatient medical services licensed health care institution as an inpatient or resident without the intent intending that the patient will be returned to the sending hospital.

~~111.~~ 115. No change

~~112.~~ 116. No change

~~113.~~ 117. "Treatment" means a procedure or method to cure, improve, or palliate an injury, an illness, or a disease a medical condition.

~~114.~~ 118. No change

~~115.~~ 119. No change

a. No change

b. No change

c. No change

~~116.~~ 120. No change

~~117.~~ 121. No change

~~118.~~ 122. No change

~~119.~~ 123. No change

**R9-10-203. Administration**

**A.** No change

1. No change

2. No change

3. No change

a. No change

b. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change

10. No change

11. No change

12. No change

13. No change

**B.** No change

1. No change

2. No change

3. No change

4. No change

**C.** No change

1. No change

a. No change

b. No change

c. No change

d. Include how a personnel member may submit a complaint relating to patient care;

~~d.~~ e. No change

i. No change

ii. No change

iii. No change

iv. No change

~~e.~~ f. No change

~~f.~~ g. No change

i. No change

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- ii. No change
- iii. No change
- iv. No change

- ~~g.~~ h. No change
- ~~h.~~ i. No change
- ~~i.~~ j. No change
- ~~j.~~ k. No change
- ~~k.~~ l. No change
- ~~l.~~ m. No change
- ~~m.~~ n. No change

- 2. No change
    - a. No change
    - b. Cover acuity, including a process for obtaining sufficient nursing personnel to meet the needs of patients at all times;
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
      - i. No change
      - ii. No change
    - i. No change
    - j. No change
  - 3. No change
  - 4. No change
  - 5. No change
    - a. No change
    - b. No change
  - 6. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
- D.** No change
- 1. No change
  - 2. No change

**R9-10-204. Quality Management**

- A.** No change
  - 1. No change
  - 2. No change
- B.** No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. A method to make changes or take action as a result of the identification of a concern about the delivery of hospital services; ~~and~~
    - e. A method to identify and document each occurrence of exceeding licensed capacity, as described in R9-10-203(C)(5), and to evaluate the occurrences of exceeding licensed capacity, including the actions taken for resolving occurrences of exceeding licensed capacity; and
    - ~~e.~~ f. No change
  - 2. No change

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- a. An identification of each concern about the delivery of hospital services; and
- b. Any changes made or actions taken as a result of the identification of a concern about the delivery of hospital services;
3. The acuity plan required in R9-10-208(C)(2) is reviewed and evaluated every 12 months and the results are documented and reported to the governing authority; and
- ~~3.~~ 4. The report reports required in subsection subsections (B)(2) and (3) and the supporting documentation for the report reports are:
  - a. No change
  - b. No change

**R9-10-206. Personnel**

No change

1. No change
2. ~~Personnel assigned to provide~~ A personnel member who provides medical services or nursing services ~~demonstrate demonstrates~~ competency and proficiency according to criteria established in hospital policies and procedures for each type of unit and each type of patient to which the personnel member is assigned;
3. No change
  - a. No change
  - b. No change
  - c. No change
4. Orientation occurs within the first 30 days of providing hospital services or volunteer service and includes:
  - a. Informing personnel about Department rules for licensing and regulating hospitals and where the rules may be obtained;
  - b. Reviewing the process by which a personnel member may submit a complaint about patient care to a hospital; and
  - c. ~~information determined~~ Providing the information required by hospital policies and procedures;
5. No change
  - a. No change
  - b. No change
6. No change
7. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
8. No change
9. No change
  - a. No change
  - b. No change
  - c. No change
10. No change
11. No change
  - a. No change
  - b. No change

**R9-10-208. Nursing Services**

A. No change

1. No change
2. No change

B. No change

C. No change

1. No change
2. An acuity plan is established, ~~and documented, to determine the types and numbers of nursing personnel necessary to provide nursing services to meet the needs of the patients; and implemented that includes:~~
  - a. A method that establishes the types and numbers of nursing personnel that are required for each unit in the hospital;
  - b. An assessment of a patient's need for nursing services made by a registered nurse providing nursing services directly to the patient; and
  - c. A policy and procedure stating the steps a hospital will take to obtain the nursing personnel necessary to meet

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patient acuity:

3. ~~The acuity plan in subsection (C)(2) is implemented;~~ Registered nurses, including registered nurses providing nursing services directly to a patient, are knowledgeable about the acuity plan and implement the acuity plan established under subsection (C)(2);
4. If licensed capacity in an organized service is exceeded or patients are kept in areas without licensed beds, nursing personnel are assigned according to the specific rules for the organized service in this Chapter;
- 4- 5. No change
- 5- 6. No change
- 6- 7. No change
- 7- 8. No change
- 8- 9. No change
- 9- 10. No change
- 10- 11. No change
- 11- 12. No change
- 12- 13. No change
  - a. No change
  - b. No change
  - c. No change
- 13- 14. No change
- 14- 15. No change
- 15- 16. No change
- 16- 17. No change

**R9-10-209. Patient Rights**

**A.** No change

1. No change
    - a. No change
    - b. No change
  2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
      - i. ~~The hospital's health care directives policies and procedures~~ Proposed medical procedures, alternatives to the medical procedures, associated risks, and possible complications;
      - ii. No change
      - iii. The hospital's patient grievance policies and procedures, including the telephone number of hospital personnel to contact about grievances, and the Department's telephone number if the hospital is unable to resolve the patient's grievance; and
      - iv. Except as authorized by the Health Insurance Portability and Accountability Act of 1996, proposed involvement of the patient in research, experimentation, or education, if applicable; ~~and~~
      - v. ~~Proposed medical procedures, alternatives to the medical procedures, associated risks, and possible complications;~~
  3. A patient or the patient's representative is provided a description of the hospital's health care directives policies and procedures:
    - a. If an inpatient, at the time of admission; or
    - b. If an outpatient:
      - i. Before any invasive procedure, except phlebotomy for obtaining blood for diagnostic purposes; or
      - ii. If the hospital services include a planned series of treatments, at the start of each series;
  - 3- 4. No change
    - a. No change
    - b. No change
  - 4- 5. No change
  - 5- 6. No change
- B.** The requirements in subsections (A)(2)(a), (A)(2)(d)(i), (A)(3), and (A)(4) do not apply in an emergency.

**R9-10-212. Transport**

**A.** No change

1. No change
  - a. No change

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- b. No change
  - c. No change
  - d. No change
  - e. Specify how a medical staff member explains the risks and benefits of a transport ~~and obtains consent from~~ to the patient or the patient's representative based on the:
    - i. No change
    - ii. No change
2. No change
- a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;
    - ~~a. b.~~ No change
    - ~~b. c.~~ No change
    - ~~c. d.~~ No change
    - ~~d. e.~~ No change
    - ~~e. f.~~ No change
- B.** No change
- 1. No change
    - a. No change
    - b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending hospital unless the receiving hospital is a satellite facility, as defined in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;
    - c. No change
    - d. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
- C.** No change
- R9-10-213. Transfer**
- A.** No change
- 1. No change
    - a. No change
    - b. No change
    - c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer; and
    - d. Specify how a medical staff member explains the risks and benefits of a transfer to the patient or the patient's representative based on the:
      - i. Patient's medical condition, and
      - ii. Mode of transfer;
  - 2. ~~Except in an emergency, a medical staff member obtains informed consent for the transfer;~~
  - 3. ~~In an emergency, documentation of informed consent or why informed consent could not be obtained is included in the medical record;~~
  - 4. One of the following accompanies the patient during transfer to the receiving hospital:
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
      - v. No change
      - vi. No change
      - vii. No change
  - 5. ~~3.~~ No change
    - a. Consent for transfer by the patient or the patient's representative, except in an emergency;
      - ~~a. b.~~ The acceptance of the patient by and communication with an individual at the receiving ~~hospital~~ health care institution;

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- ~~b.~~ c. The date and the time of the transfer to the receiving ~~hospital~~ health care institution;
- ~~e.~~ d. No change
- ~~d.~~ e. No change

B. A sending hospital and a receiving hospital that are licensed at separate locations and have the same Medicare number issued by the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services are exempt from subsections (A)(1)(c), ~~(A)(4)~~ (A)(2) and ~~(A)(5)(a)~~ (A)(3)(a).

**R9-10-218. Clinical Laboratory Services and Pathology Services**

No change

1. No change
2. No change
3. No change
4. A special hospital whose ~~patients' diagnoses or treatment requires~~ patients require clinical laboratory services ~~provides the services within the special hospital 24 hours a day.~~
  - a. Is able to provide clinical laboratory services when needed by the patients.
  - b. Obtains specimens for clinical laboratory services without transporting the patients from the special hospital's premises, and
  - c. Has the examination of the specimens performed by a clinical laboratory on the special hospital's premises or by arrangement with a clinical laboratory not on the premises.
5. No change
6. No change
7. No change
  - a. No change
    - i. No change
    - ii. No change
  - b. No change
8. No change
9. No change
10. No change
  - a. No change
  - b. No change
  - c. No change
11. No change
  - a. No change
  - b. No change
12. No change

**R9-10-219. Radiology Services and Diagnostic Imaging Services**

A. No change

1. No change
2. No change
3. No change
4. A hospital that provides surgical services has radiology services and diagnostic imaging services on the hospital's premises to meet the needs of patients;
- ~~4.~~ 5. No change
- ~~5.~~ 6. Except as provided in subsection (A)(4), A a special hospital whose patients' diagnoses or treatment requires patients require radiology services and diagnostic imaging services is able to provide the radiology services and diagnostic imaging services or has a documented plan to provide the services to meet the needs of a patient when needed by the patients:
  - a. On the special hospital's premises, or
  - b. By arrangement with a radiology and diagnostic imaging facility that is not on the special hospital's premises.

B. No change

1. No change
  - a. No change
  - b. No change
    - i. No change
    - ii. No change
    - iii. No change
    - iv. No change
2. No change

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3. A ~~radiologist prepares a documented~~ radiologic or diagnostic imaging patient report is prepared that includes:
  - a. No change
  - b. No change
  - c. A medical staff member's or radiologist's interpretation of the image;
  - d. No change
  - e. The adverse reaction to the radiopharmaceutical, if any; and
4. A radiologic or diagnostic imaging patient report is included in the patient's medical record; ~~and,~~
5. ~~A radiologic or diagnostic image is maintained by the hospital for at least 12 months from the date of the imaging.~~

**R9-10-220. Intensive Care Services**

- A. No change
- B. No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
    - a. With a minimum of one registered nurse assigned for every ~~three~~ two patients; and
    - b. According to an acuity plan as required in R9-10-208;
  6. Each intensive care unit has a policy and procedure that provides for meeting the needs of the patients at all times;
  7. ~~No change~~
  8. ~~No change~~
  9. ~~Nursing personnel assigned to an intensive care unit are~~ At least one registered nurse assigned to a patient in an intensive care unit is qualified in advanced cardiopulmonary resuscitation specific to the age of the patients in the intensive care unit patient;
  10. ~~No change~~
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  11. ~~No change~~
- C. No change

**R9-10-222. Perinatal Services**

- A. No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
  7. No change
  8. No change
  9. No change
  10. No change
  11. No change
    - a. No change
    - b. No change
  12. No change
    - a. No change
    - b. No change

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- 13. No change
- 14. No change
- 15. No change
- 16. A minimum of one registered nurse is on duty in a nursery at all times when there is a neonate in a the nursery except as provided in subsection (A)(17);
- 17. A nursery occupied only by a neonate, who is placed in the nursery for the convenience of the neonate's mother and does not require treatment as defined in this Article, is staffed by a licensed nurse;
- ~~17.~~ 18. No change
- ~~18.~~ 19. No change

**B.** No change

**R9-10-228. Medical Records**

**A.** No change

- 1. No change
- 2. No change
  - a. No change
  - b. No change
  - c. No change
- 3. No change
  - a. No change
  - b. No change
  - c. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
  - a. No change
  - b. No change
- 8. No change
  - a. No change
  - b. No change
- 9. No change
- 10. A medical record is:
  - a. No change
  - b. According to A.R.S. § 12-2297, ~~maintained for seven years from the date of patient discharge unless the patient is less than 18 years of age, in which case the record is maintained for three years after the patient's 18th birthday or at least seven years after the last date the child received hospital services, whichever date occurs last;~~
- 11. No change
- 12. No change

**B.** No change

- 1. No change
- 2. No change

**C.** No change

- 1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 2. No change
  - a. No change
  - b. No change
  - c. No change
    - i. No change
    - ii. No change
    - iii. No change
    - iv. No change
- 3. No change
- 4. No change
- 5. No change

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- 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
  - 10. No change
  - 11. No change
  - 12. No change
  - 13. No change
  - 14. No change
  - 15. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
- D.** No change
- 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
- E.** No change
- 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 25. DEPARTMENT OF HEALTH SERVICES  
EMERGENCY MEDICAL SERVICES**

[R05-15]

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

Notices of Final Rulemaking

R9-25-306  
R9-25-309

Amend  
Amend

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

Authorizing statute: A.R.S. §§ 36-2202(A)(4) and 36-2209(A)(2)

Implementing statute: A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)

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

March 5, 2005

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 2607, June 25, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 4008, October 8, 2004

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

Name: Dona Marie Markley, EMS Policy and Practice Administrator

Address: Arizona Department of Health Services  
Bureau of Emergency Medical Services  
150 N. 18th Ave., Suite 540  
Phoenix, AZ 85007

Telephone: (602) 364-3152

Fax: (602) 364-3568

E-mail: markled@azdhs.gov

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services  
Office of Administrative Rules  
1740 W. Adams St., Suite 202  
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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

A.R.S. § 36-2202(A)(3) and (4) require the Arizona Department of Health Services to adopt standards and criteria pertaining to the quality of emergency care pursuant to A.R.S. § 36-2204 and to adopt rules necessary to carry out the provisions of A.R.S. Title 9, Chapter 21.1, Emergency Medical Services. A.R.S. § 36-2204(1) and (3) require the Medical Director for Emergency Medical Services and the Emergency Medical Services Council to recommend to the ADHS Director standards and criteria, pertaining to the quality of emergency patient care, for statewide standardized training for all classifications of emergency medical technicians (EMTs) and medical standards for certification and recertification of training programs for all classifications of EMTs. In 9 A.A.C. 25, Article 3, the Arizona Department of Health Services (ADHS) establishes standards and criteria for statewide standardized training for EMTs and standards for certification and recertification of training programs for EMTs. In addition to including standards for the full EMT-Basic (EMT-B), EMT-Intermediate (EMT-I), and EMT-Paramedic (EMT-P) courses, the rules include standards for abbreviated courses known as refresher courses both at the EMT-B level and, for EMT-Is or EMT-Ps, the Advanced Life Support (ALS) level.

R9-25-306(B)(2) provides the minimum admission requirements for the Arizona EMT-B refresher course. ADHS has determined that R9-25-306(B)(2)(a)(iii) excludes from admission to the Arizona EMT-B refresher individuals who have never held National Registry of Emergency Medical Technicians (NREMT) Basic or higher level registration, but who could become eligible to obtain NREMT-Basic registration through NREMT testing upon completion of the Arizona EMT-B refresher. This includes NREMT-Basic candidates who may use an Arizona EMT-B refresher to meet NREMT remedial training or testing eligibility requirements. ADHS did not intend to exclude those individuals from admission to the Arizona EMT-B refresher and is revising R9-25-306(B)(2)(a)(iii) so that they are not excluded. ADHS is also revising the rule to allow admission to any other individual who is required by NREMT to take an Arizona EMT-B refresher course in order to seek NREMT registration.

R9-25-309(B)(2) provides the minimum admission requirements for the Arizona ALS refresher. ADHS has determined that R9-25-309(B)(2)(a)(iii) excludes from admission to the Arizona ALS refresher individuals who have never held NREMT-Intermediate or NREMT-Paramedic registration, but who could become eligible to obtain NREMT-Intermediate or NREMT-Paramedic registration through NREMT testing upon completion of the Arizona

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ALS refresher. This includes NREMT-Intermediate and NREMT-Paramedic candidates who may use an Arizona ALS refresher to meet NREMT remedial training or testing eligibility requirements. ADHS did not intend to exclude those individuals from admission to the Arizona ALS refresher and is revising R9-25-309(B)(2)(a)(iii) so that they are not excluded. ADHS is also revising the rule to allow admission to any other individual who is required by NREMT to take an Arizona ALS refresher course in order to seek NREMT registration.

Current NREMT registration is a prerequisite to obtaining EMT certification under 9 A.A.C. 25, Article 4.

**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:**

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:**

As used in this summary, minimal means less than \$1,000, moderate means \$1,000 to \$9,999, and substantial means \$10,000 or more.

ADHS will incur minimal-to-moderate costs from the rulemaking process and does not anticipate that any other persons will incur costs as a result of the rulemaking.

This rulemaking will benefit individuals who have never held NREMT registration; who desire to become EMTs; and whom NREMT requires to complete a refresher course either as remedial training or otherwise in order to obtain NREMT registration. These individuals will potentially receive a substantial benefit from this rulemaking. R9-25-306 and R9-25-309 currently exclude these individuals from refresher course admission because they have never held NREMT registration. Excluding these individuals from admission to the refresher courses effectively prevents them from obtaining NREMT registration, resulting in their inability to obtain EMT certification from ADHS. ADHS estimates that approximately 200 to 400 prospective EMT certification applicants may be substantially benefited each year by being able to attend refresher courses. In addition, this rulemaking will potentially benefit other candidates for NREMT registration whom NREMT requires to take a refresher course in order to seek NREMT registration and who would not be eligible to take a refresher course under the current rules. These individuals will be eligible to take refresher courses as a result of this rulemaking and thus will not be prevented from obtaining NREMT registration and, thus, EMT certification.

This rulemaking will also potentially benefit persons that offer Arizona EMT-B refresher courses and persons that offer Arizona ALS refresher courses. There are currently 24 certified ALS training programs and 39 certified EMT-B training programs, operated by 42 different persons. These 42 persons include 15 community colleges; 13 fire departments or fire districts; the University of Arizona; the Maricopa County Sheriff's Office; and 12 health care corporations, ambulance corporations, and other private business entities. In addition, there are currently 4 ALS base hospitals that offer the EMT-B refresher course and 5 ALS base hospitals that offer the ALS refresher course. Each certified training program or ALS base hospital that offers refresher courses will potentially receive a minimal-to-moderate benefit as a result of the expanded pool of potential students for those courses.

ADHS believes that most of the private businesses that are certificate holders for training programs are small businesses as defined in A.R.S. § 41-1001. This rulemaking does not impose any costs on small businesses.

ADHS does not believe that there is a less intrusive or less costly alternative method of achieving the purpose of the rulemaking.

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

None

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

Although ADHS held an oral proceeding on November 15, 2004, no oral or written comments were received regarding the proposed rules.

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

Not applicable

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

R9-25-306 and R9-25-309 each contain an incorporation by reference. In this rulemaking, ADHS is not incorporating by reference any new material and is not making any changes to the existing incorporations by reference.

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

No

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 25. DEPARTMENT OF HEALTH SERVICES  
EMERGENCY MEDICAL SERVICES**

**ARTICLE 3. TRAINING PROGRAMS**

Section

R9-25-306. Arizona EMT-B Refresher, Arizona EMT-B Refresher Challenge Examination (Authorized by A.R.S. §§ 36-2202(A)(3) and (A)(4) and 36-2204(1) and (3))

R9-25-309. Arizona ALS Refresher; Arizona ALS Refresher Challenge Examination (Authorized by A.R.S. §§ 36-2202(A)(3) and (A)(4) and 36-2204(1) and (3))

**R9-25-306. Arizona EMT-B Refresher, Arizona EMT-B Refresher Challenge Examination (Authorized by A.R.S. §§ 36-2202(A)(3) and (A)(4) and 36-2204(1) and (3))**

**A.** No change

1. No change
2. No change
3. No change

**B.** No change

1. No change
2. No change
  - a. No change
    - i. No change
    - ii. No change
    - iii. ~~For an individual with lapsed NREMT-Basic or higher level registration, eligibility~~ Being required by NREMT to complete the Arizona EMT-B refresher to become eligible to have seek NREMT-Basic registration reinstated upon completion of the Arizona EMT-B refresher; and
  - b. No change

3. No change
4. No change
5. No change
6. No change
7. No change
  - a. No change
  - b. No change
8. No change
  - a. No change
  - b. No change
  - c. No change
9. No change
  - a. No change
  - b. No change

**C.** No change

**D.** No change

1. No change
2. No change

**R9-25-309. Arizona ALS Refresher; Arizona ALS Refresher Challenge Examination (Authorized by A.R.S. §§ 36-2202(A)(3) and (A)(4) and 36-2204(1) and (3))**

**A.** No change

1. No change
2. No change
3. No change

**B.** No change

1. No change
2. No change

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- a. No change
  - i. No change
  - ii. No change
  - iii. ~~For an individual with lapsed NREMT-Intermediate or NREMT-Paramedic registration, eligibility Being required by NREMT to have complete the Arizona ALS refresher to become eligible to seek NREMT-Intermediate or NREMT-Paramedic registration reinstated upon completion of the Arizona ALS refresher; and~~
- b. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
  - a. No change
  - b. No change
  - c. No change
- 9. No change
  - a. No change
  - b. No change
- C. No change
- D. No change
  - 1. No change
  - 2. No change

**NOTICE OF FINAL RULEMAKING**

**TITLE 17. TRANSPORTATION**

**CHAPTER 9. DEPARTMENT OF ADMINISTRATION  
SCHOOL BUSES**

[R05-16]

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R17-9-101                          | Amend                           |
| R17-9-102                          | Amend                           |
| R17-9-103                          | Amend                           |
| R17-9-104                          | Amend                           |
| R17-9-109                          | Amend                           |
| R17-9-112                          | New Section                     |
| Exhibit A                          | Repeal                          |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. §§ 28-900 and 28-3228  
Implementing statute: A.R.S. §§ 15-513, 28-900 and 28-3228
- 3. The effective date of the rules:**  
March 5, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rules:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 1629, April 23, 2004  
Notice of Proposed Rulemaking: 10 A.A.R. 1850, May 7, 2004  
Notice of Supplemental Proposed Rulemaking: 10 A.A.R. 3876, September 24, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Jeanne Hann  
Address: 100 N. 15th Ave., Ste. 402  
Phoenix, AZ 85007  
Telephone: (602) 542-2006

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Fax: (602) 542-1486  
E-mail: Jeanne.hann@ad.state.az.us

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

R17-9-102 is amended to require that an applicant pass a physical performance test before certification and that a school bus driver pass the test every two years after certification. It is also amended to require additional records be maintained so the Department can determine whether applicants actually receive the required number of hours of classroom and behind-the-wheel training and whether school bus drivers receive the required number of hours of refresher training.

Federal materials dealing with drug and alcohol testing of a school bus driver, which are incorporated by reference, are updated. R17-9-102 is amended to clarify that a nine-panel test for use of controlled substances, which is not required by federal law, must be performed before employment and annually using a procedure that is generally accepted in the scientific community to be accurate and reliable. The physical examination form used to assess the health qualification of an applicant or school bus driver is changed from that issued by the federal government to that issued by the Arizona Department of Transportation.

R17-9-103, regarding classroom and behind-the-wheel instructors, is amended to be consistent with statute. The Department will no longer certify individuals as instructors. Rather, it will determine whether they are qualified to act as instructors and school bus drivers and applicants may obtain and maintain certification only if they receive training from qualified instructors. As a result of this change, R17-9-109, dealing with time-frames for certification, is also amended.

At the request of members of the public, R17-9-104 is amended to provide that a passenger may carry and consume while being transported on a school bus a dangerous or narcotic drug if certain specific criteria are met.

A new Section, R17-9-112, is added specifying that the Department's enforcement authority permits it to conduct audits of the records required to be maintained under this Chapter. Other minor changes include clarifying that the results of a negative drug test must be submitted within 12 months of a previous test and the behind-the-wheel training and driving test results in a pass or fail grade rather than a numerical score.

**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 Department of Public Safety, which enforces the school bus rules, conducted two surveys in which a representative of each student transportation district or provider was asked questions regarding the proposed rule change to allow administration of drugs on a school bus and the cost of required drug tests. A response regarding administration of drugs on a school bus was received from 138 districts or providers; 131 responded regarding the cost of required drug tests. Although the answers provided informed preparation of the economic, small business, and consumer impact statement for this rulemaking, the results were not summarized in a report and the Department of Administration did not rely on the surveys in an evaluation of or justification for this rulemaking. The survey forms and responses are available for review at the Department.

**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 rule changes will have minimal economic impact unless a school district decides to permit a passenger to carry and consume while being transported on a school bus a dangerous or narcotic drug. The responses to the survey mentioned in item 7 suggest that few, if any, school districts will develop and implement a policy of this nature. If a school district voluntarily decides to develop and implement a policy of this nature, it will incur the cost of meeting the criteria established in the rule, which can be substantial. This includes the cost of hiring and training a qualified person to travel on the school bus with an affected passenger, establishing written policies and procedures regarding the administration of a dangerous or narcotic drug by a trained district employee to a passenger, ensuring that prior authorization is obtained from the affected passenger's parent or legal guardian, and maintaining records.

Clarification of the requirements regarding testing for use of controlled substances will reduce costs for employers. No new drug tests are required. The nine-panel pre-employment drug test of applicants and the annual test of all school bus drivers, which are not required by federal law, may be performed using a procedure generally recognized in the scientific community to be reliable and accurate. This procedure is less expensive to use than the one required under federal law. The procedure required under federal law must still be used when conducting tests required under federal law.

Minimal costs will be incurred by employers by the requirement that applicants and school bus drivers pass a physical performance test. The testing may be done by currently employed classroom or behind-the-wheel instructors or others who complete a Department-authorized training program. The test will take only a few minutes to administer to each applicant and school bus driver. The costs incurred will be those associated with training persons to admin-

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ister the test and the time of those who administer the test and school bus drivers who take the test. Based on experience in states that already require that school bus drivers pass a physical performance test, it is estimated that the failure rate will be about one percent. If a school bus driver or applicant fails the test, the employer will incur the cost of hiring and training someone else. This expense is offset by the additional safety provided to passengers. There will be an unavoidable economic impact on an applicant or school bus driver who fails the physical performance test.

The additional records that must be maintained under R17-9-102 will minimally increase costs for employers. This cost is offset by an increase in passenger safety resulting from the Department's ability to determine whether an applicant obtained the required number of hours of classroom and behind-the-wheel training before being certified and whether a school bus driver obtained the required number of hours of refresher training.

No longer having to track compliance with a time-frame rule regarding qualification of classroom and behind-the-wheel instructors will minimally reduce costs for the Department and make more time available to supervise training and certification of school bus drivers.

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

Changes made to the proposed rule necessitated that a Notice of Supplemental Proposed Rulemaking be published. The supplemental proposed rules differed from the proposed rules in two major ways:

- The drug testing requirement in R17-9-102 was clarified. In the rule as originally proposed, it was not clear that an applicant has to submit to testing for use of nine drugs using a procedure that is generally accepted in the scientific community as accurate and reliable. This test is in addition to the federally required tests.
- A physical performance test was added to the requirements that an applicant must pass before being certified as a school bus driver and that a school bus driver must pass every two years to maintain certification. Currently certified school bus drivers are provided one year in which to pass the physical performance test.

Only minor, technical, changes were made between the supplemental proposed rules and the final rules.

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

No comments were received regarding the rulemaking in its supplemental proposed form.

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

Under A.R.S. § 28-900(A), the Department of Administration is required to consult with the Department of Public Safety and the school bus advisory council established by A.R.S. § 28-3053 when making these rules. This consultation was done.

**13. Any material incorporated by reference and its location in the rules:**

U.S. Department of Transportation, Federal Highway Administration, 49 CFR 382, October 2003, incorporated at R17-9-101 ("Controlled substances and alcohol testing").

U.S. Department of Transportation, Federal Highway Administration, 49 CFR 40, October 2003, incorporated at R17-9-101 ("Controlled substances and alcohol testing").

**14. Were these rules previously made as emergency rules:**

No

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

TITLE 17. TRANSPORTATION

CHAPTER 9. DEPARTMENT OF ADMINISTRATION  
SCHOOL BUSES

ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

Section

- R17-9-101. Definitions
- R17-9-102. Certification of School Bus Drivers
- R17-9-103. ~~Certification~~ Qualification of Classroom and Behind-the-wheel Instructors
- R17-9-104. Minimum Standards for School Bus Operation
- R17-9-109. Time-frames for Making Certification Determinations
- R17-9-112. Enforcement Audits
- Exhibit A. ~~Proof of Completion of Behind the wheel Training and Driving Test~~ Repealed

ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

**R17-9-101. Definitions**

In this Chapter, unless otherwise specified:

“Accident” means any unexpected occurrence involving a moving or non-moving school bus that results in any bodily injury or fatality to a passenger or non-passenger, damage to personal or real property outside the school bus, or damage to the school bus that affects the integrity of the school bus or results in a major defect as described in A.A.C. R17-9-108(B).

“Alternately flashing signal lamps” means a system of red or red and amber lamps that are mounted horizontally to both the front and rear of the school bus body and used to inform the public that the school bus is preparing to stop or has stopped to load or unload passengers. Alternately flashing signal lamps can be either a 4-lamp system as described in A.A.C. R17-9-107(15)(c)(i) or an 8-lamp system as described in A.A.C. R17-9-107(15)(c)(ii).

“Alteration” means any addition, modification, or removal of any equipment or component after a school bus is inspected by the Department, which may affect the operations of the school bus; compliance with the statutes or rules applicable to school buses; or the health, safety, or welfare of any individual.

“Applicant” means an individual who submits an application to the Department to obtain a certificate to operate a school bus ~~or to teach classroom or behind-the-wheel training.~~

“ASE” means National Institute of Automotive Service Excellence.

“Auxiliary fan” means a device mounted inside the school bus body used to supplement the heating, defrosting, or air-conditioning systems by circulating air in the school bus.

“Behind-the-wheel instructor” means an individual ~~certified by the Department~~ qualified under A.A.C. R17-9-103 to provide behind-the-wheel training to applicants.

“Behind-the-wheel training” means the complete physical control of a school bus by an applicant while accompanied by and under direct observation of a behind-the-wheel instructor.

“Belt cutter” means a hand-held instrument containing a blade used to sever a seat belt or a wheelchair-securement device.

“Certificate” means a written authorization issued by the Department to operate a school bus ~~or to act as a classroom or behind-the-wheel instructor~~ in Arizona.

“Chassis” means the part of a school bus that consists of all base components, including the frame, front and rear suspension, exhaust system, brakes, engine, engine hood or cover, transmission, front and rear axles, front fenders, drive train and shaft, fuel system, engine air intake and filter, clutch and accelerator pedals, steering wheel, tires, heating and cooling system, battery, and controls and instruments to operate the school bus.

“Chassis cowl” means those parts of a Type C school bus that are located in front of the cowl and attached before a school bus manufacturer adds the school bus body.

“Citation” has the same meaning as at A.R.S. § 28- 1872.

“Classroom instructor” means an individual ~~certified by the Department~~ qualified under A.A.C. R17-9-103 to provide classroom training to:

Applicants to operate a school bus,

~~Applicants~~ Individuals becoming qualified to teach classroom training,

~~Applicants~~ Individuals becoming qualified to teach techniques of behind-the-wheel training, or

School bus drivers ~~for taking~~ refresher training.

“Classroom training” means the courses required by the Department of an applicant before the applicant is certified or of an individual seeking qualification as a classroom or behind-the-wheel instructor.

“Commercial driver license” has the same meaning as at A.R.S. § 28- 3001.

“Controlled substances and alcohol testing” means a determination of an applicant’s or school bus driver’s use of marijuana, cocaine, phencyclidine, opiates, amphetamines, and alcohol prescribed by 49 CFR 382, October 1999 2003 (no later amendments or editions), and conducted in accordance with the procedures at 49 CFR 40, October 1999 2003 (no later amendments or editions), both published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department ~~and the Office of the Secretary of State~~, and a determination of an applicant’s or school bus driver’s use of marijuana, cocaine, phencyclidine, opiates, amphetamines, barbiturates, benzodiazepines, methadone, and propoxyphene as required by these rules and conducted in accordance with ~~the procedures at 49 CFR 40~~ a procedure that is generally accepted in the scientific community to be accurate and reliable.

“Cowl” means the portion of the chassis in a Type C school bus that separates the school bus engine from the school bus driver’s compartment.

“Cutaway van” means a chassis to which a completed driver’s compartment is attached before a school bus manufacturer adds a school bus body.

“dB(A)” means decibels A scale, a term denoting that noise level has been adjusted to duplicate human hearing.

“Department” means the Arizona Department of Public Safety.

“Driver’s compartment” means the part of a school bus body that is separated from the passenger compartment by a barrier and contains the controls and instruments for the operation of the school bus.

“Emergency-brake system” means mechanical components used to slow or stop a school bus after a failure of the service-brake system.

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“Emergency exit” means an opening in a school bus, including a door, push-out window, or roof hatch, used to unload passengers in the event of an occurrence that requires immediate evacuation of the school bus.

“Employer” means a private business or school district that hires applicants and certified school bus drivers to operate school buses.

“Forward-control chassis” means a chassis to which controls used to operate a school bus, including the brake, clutch and accelerator pedals, emergency brake, and steering wheel, are mounted as far forward on the chassis as possible and are attached before a school bus manufacturer adds a school bus body.

“Frame” means the structural foundation upon which a school bus chassis is constructed.

“Frontage road” means a street that parallels an interstate highway and furnishes access to streets and property that would otherwise be unreachable from the interstate highway.

“Gross vehicle weight rating” means the value specified by the manufacturer as the maximum total loaded weight of a school bus, calculated in accordance with A.A.C. R17-9-106(26).

“Health care professional” means:

A physician licensed to practice medicine under A.R.S. § 32-1401 et seq., osteopathy under A.R.S. § 32- 1800 et seq., or chiropractic under A.R.S. § 32- 900 et seq.;

A physician licensed to practice medicine, osteopathy, or chiropractic in a state contiguous to Arizona;

A physician employed by the United States government and licensed by a state or territory of the United States;

A physician assistant licensed under A.R.S. § 32-2501 et seq.; or

A registered nurse practitioner licensed under A.R.S. § 32- 1601 et seq.

“Highway” has the same meaning as at A.R.S. § 28-101(48).

“Identification” means the signs, lettering, or numbers placed on the interior or exterior of a school bus body, including the glass areas, but does not include the lettering, numbers, or logos of a manufacturer or distributor of the manufacturer’s product.

“Ignition power-deactivation switch” means a device that when set causes the engine of a motor vehicle to stop operating if the transmission is placed into gear or the parking-brake system is released.

“Interstate highway” means the designation given by the federal government to the system of highways connecting two or more states of the United States.

“Lamp” means a device that is covered by a lens and used to produce artificial light.

“Major defect” means a condition that exists to the interior or exterior of a school bus that causes the Department or owner to place the school bus out of service while the defect is being corrected.

“Manufacturer” means an entity engaged in the manufacturing or assembling of a school bus chassis, school bus body, or school bus chassis and body.

“Medical practitioner” has the same meaning as at A.R.S. § 32-1901.

“Minor defect” means a condition that exists to the interior or exterior of a school bus that is not a major defect and allows the school bus to remain in operation while the defect is being corrected.

“Off-duty” means the time a school bus driver is not on-duty.

“On-duty” means the period between the time a school bus driver begins to work for the employer or is required to be ready to work for the employer until the time the school bus driver is relieved from work and all responsibility for performing work for the employer. The time on-duty is used only to determine when a school bus driver must be provided time off-duty. Time on-duty may be compensated by the employer or an entity other than the employer or may be uncompensated. On-duty includes:

All time at an employer’s place of business, waiting to be dispatched.

All time performing an operations check of a school bus in accordance with A.A.C. R17-9-108, or servicing or conditioning a school bus;

All time driving a school bus, including loading or unloading the school bus, and remaining in readiness to drive a school bus;

All time, at the direction of the employer, travelling but not driving a school bus or assuming any other responsibility to the employer. If the school bus driver is afforded at least eight consecutive hours off-duty upon arrival at the school bus driver’s destination after travelling but not driving a school bus or assuming any other responsibility to the employer, the school bus driver shall be considered off-duty for the entire period travelling but not driving the school bus or assuming any other responsibility to the employer;

All time repairing, obtaining assistance, or remaining in attendance upon a disabled school bus;

All time preparing required reports and records;

All time providing a breath or urine sample, including travel time to and from the collection site, to comply with the testing requirements of this Chapter;

All time performing any other work for the employer; and

All time performing any compensated work for any entity other than the employer.

“Out of service” means a school bus cannot be used to transport passengers.

“Owner” means the public or governmental agency or institution or private company in whose name a school bus is titled.

“Parking-brake system” means mechanical components used to prevent the movement of a school bus while loading or unloading a passenger or when the school bus is parked.

“Passenger” means an individual who rides in a school bus but does not participate in the operation of the school bus.

“Passenger compartment” means that part of the school bus body that is separated from the school bus driver’s compartment by a barrier and holds the passengers to be transported.

“Physical examination” means an evaluation of an applicant’s or school bus driver’s medical status performed by a health care professional according to this Article.

“Physical examination form” means the ~~form at 49 CFR 391.43, published October 1999 (and no future amendments or editions) by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department and the Office of the Secretary of State~~ Arizona Department of Transportation, Motor Vehicle Division, Medical Examination Report, which is used to record the results of a physical examination and may be obtained from the Department or Arizona Department of Transportation, Motor Vehicle Division.

“Physical performance test” means an evaluation of an applicant’s or school bus driver’s reflexes, agility, and strength performed according to this Article.

“Physical performance test form” means the document used to record the results of a physical performance test and may be obtained from the Department.

“Push-out window” means safety glass enclosed in a frame on a school bus that moves to the outside of the school bus when force is applied to the window from inside the school bus.

“Refresher training” means the courses required by the Department of each school bus driver to maintain certification as a school bus driver in Arizona.

“Restraining barrier” means a structure located in front of any school bus seat that restricts the forward motion of a passenger.

“Rub rail” means a horizontal steel bar attached to the outside of a school bus body used to reinforce the sides of the school bus.

“Safety glass” has the same meaning as at A.R.S. § 28-959(F).

“School” means a school as defined by A.R.S. § 15-101(19), accommodation school as defined by A.R.S. § 15-101(1), charter school as defined by A.R.S. § 15-101(3), or private school as defined by A.R.S. § 15-101(18).

“School bus” has the same meaning as at A.R.S. § 28-101~~(43)~~.

“School bus body” means a structure assembled upon a chassis designed to carry a school bus driver and passengers.

“School bus driver” means an individual who is certified by the Department as meeting the requirements at A.R.S. § 28-3228 and A.A.C. R17-9-102 to operate a school bus in Arizona.

“School district” has the same meaning as at A.R.S. § 15-101 (20).

“Service-brake system” means mechanical components used to slow or stop a school bus.

“Service door” means a metal structure used to close the opening of a service entrance.

“Service entrance” means an opening in a school bus used to load or unload passengers.

“Special needs school bus” means a school bus that is designed to transport disabled passengers, some of whom may use a wheelchair, and is constructed with a service entrance and a special-service entrance.

“Special-service entrance” means an opening in a school bus that accommodates a wheelchair lift for the loading or unloading of a passenger who uses a wheelchair.

“Special-service entrance door” means a metal structure used to close the opening of a special-service entrance.

“Street” has the same meaning as at A.R.S. § 28-101~~(48)~~.

“Traffic control signal” has the same meaning as at A.R.S. § 28-601~~(27)~~.

“Training” means the instruction, courses, classes, or workshops provided by the Department or the employer that are required to obtain or maintain certification as a school bus driver; qualification as a classroom instructor, or behind-the-wheel instructor, or qualification to administer the physical performance test in Arizona.

“Transport” or “transporting” means a school bus driver sets a school bus in motion to carry passengers or objects authorized by the school district to be carried in a school bus.

“Type A school bus” means a van converted to a school bus body or a school bus body that is constructed upon a cutaway van, has a left side door for the school bus driver, and is designed to carry more than 10 individuals. Part of the engine is beneath the windshield and beside the driver’s seat and the service door is located behind the front wheels. A Type A school bus, which is sometimes called a Type A-II school bus, has a gross vehicle weight rating of 10,000 pounds or less.

“Type B school bus” means a school bus body that is constructed upon a cutaway van or a forward-control chassis, has a gross vehicle weight rating of more than 10,000 pounds, and is designed to carry more than 10 individuals. Part of the engine is beneath the windshield and beside the driver’s seat and the service door is located behind the front wheels. A Type B school bus is sometimes called a Type A-I school bus.

“Type C school bus” means a school bus body that is installed either upon a chassis cowl with the engine located beneath or in front of the windshield and in front of the cowl or upon a forward-control chassis with part of the engine beneath the windshield and beside the driver’s seat. The service door is located behind the front wheels. The school bus has a gross

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vehicle weight rating of more than 10,000 pounds and is designed to carry more than 10 individuals.

“Type D school bus” means a school bus body that is installed upon a chassis with the engine mounted in front of the front axle, between the front and rear axles, or behind the rear axle. The school bus driver’s seat and the service door are located in front of the front wheels. The school bus has a gross vehicle weight rating of more than 10,000 pounds and is designed to carry more than 10 individuals.

“Van” means a covered or enclosed truck.

“Wheelchair” means a mobility aid consisting of a frame, seat, and three or four wheels, which is used to support and carry a disabled passenger.

“Wheelchair lift” means an electric hydraulic mechanism and platform in a school bus used to raise and lower a passenger in a wheelchair.

“Wheelchair-lift platform” means a horizontal surface upon which a wheelchair sits while being raised or lowered.

“Wheelchair-passenger restraint” means a combination of a pelvic and an upper torso restraint, including buckles and fasteners, designed to secure a passenger in a wheelchair within a school bus.

“Wheelchair-passenger restraint anchorage” means equipment for fastening wheelchair-passenger restraints to the interior of a school bus.

“Wheelchair-securement anchorage” means equipment for fastening a wheelchair-securement device to a school bus floor.

“Wheelchair-securement device” means a strap or webbing, including buckles and fasteners, used for fastening a wheelchair to a wheelchair-securement anchorage.

“Wheelchair-securement system” means components used to fasten a wheelchair to the interior of a school bus, including a wheelchair-securement anchorage and a wheelchair-securement device.

**R17-9-102. Certification of School Bus Drivers**

**A.** Certification requirements. An individual shall not operate a school bus in Arizona without being certified by the Department. An applicant for certification shall:

1. Be a minimum of 18 years of age;
2. Submit all of the following to the Department through the employer:
  - a. A completed fingerprint card and fingerprint card processing fee;
  - b. An application signed and dated by the applicant that states the applicant’s:
    - i. Name, home address, and home phone number;
    - ii. Any alias ever used by the applicant;
    - iii. Social security number;
    - iv. Date of birth;
    - v. Arizona commercial driver license number;
    - vi. Date of previous application for certification, if any;
    - vii. Intended employer’s name;
    - viii. Convictions for a felony or misdemeanor, if any, in this state or any other state; and
    - ix. Total points accumulated against the applicant’s driving record during the two years immediately preceding the date of application using the point system contained in A.A.C. ~~R17-4-506~~ R17-4-404;
  - c. Completed physical examination form, completed physical performance test form, and results of controlled substances testing; and
  - d. A verification made under penalty of perjury that all submitted information is true and complete;
3. Possess a current Arizona commercial driver license under A.R.S. § 28- 3101;
4. Possess ~~a current any Arizona passenger driver license endorsement required~~ under A.R.S. § 28- 3103(A)(4);
5. Meet the driving record requirements listed in this Article; and
6. Complete the training requirements listed in this Article.

**B.** Physical examination

1. An applicant or school bus driver shall submit to a physical examination that is conducted by a health care professional in accordance with the physical examination form. An applicant or school bus driver is qualified to ~~operate a school bus~~ be certified as a school bus driver only if the health care professional conducts the physical examination in accordance with the physical examination form and concludes that the applicant or school bus driver has no condition that would interfere with the applicant’s or school bus driver’s ability to: ~~operate~~ Operate a school bus safely; Evacuate a school bus during an emergency or during a drill required under R17-9-104(D), and Perform the operations checks required under R17-9-108(D).
2. An applicant or school bus driver who is insulin dependent shall obtain the waiver described in A.A.C. ~~R17-4-435.06~~ R17-5-208.
3. An applicant shall submit the completed physical examination form and, if applicable, a copy of the waiver required under subsection (B)(2), to the Department through the employer.
4. The initial physical examination of an applicant, conducted in accordance with the physical examination form,

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expires 24 months from the date of the physical examination unless a shorter time is specified by the health care professional who administers the physical examination. A school bus driver shall submit to a physical examination before the expiration date of the previous physical examination and send the completed physical examination form to the Department through the employer before the end of the month in which the previous physical examination expires.

5. If a health care professional determines that further testing of an applicant or school bus driver is needed by an ophthalmologist or optometrist, the health care professional shall refer the applicant or school bus driver to:
  - a. An ophthalmologist licensed under A.R.S. § 32-1401 et seq,
  - b. An optometrist licensed under A.R.S. § 32-1701 et seq,
  - c. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by a state contiguous to Arizona, or
  - d. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by any state or territory of the United States and employed by the United States government.
6. In addition to the physical examinations required by this Article, the Department or the employer may require a physical examination of ~~a~~ an applicant or school bus driver for an impairment that would affect the ability to ~~operate a school bus safely~~ perform the activities listed in subsection (B)(1). The Department or employer shall base its decision to require an additional physical examination upon consideration of the appearance or actions of the applicant or school bus driver ~~or of medical information received by the Department regarding the applicant or school bus driver~~. The applicant or school bus driver shall submit results of a physical examination conducted under this subsection to the Department through the employer within 30 days of the date of the physical examination.

**C. Controlled substances and alcohol testing**

1. An applicant or school bus driver shall submit to alcohol and controlled substances testing as required by A.R.S. § 28-3228(C)(2) and as prescribed by this Article and 49 CFR 382 (~~1999~~ 2003), which is conducted in accordance with the procedures at 49 CFR 40 (~~1999~~ 2003), except for the changes in 49 CFR 40 and 49 CFR 382 listed in subsections (C)(1)(a) through (C)(1)(i).
  - a. 49 CFR 40.3
  - i. “Employee,” “individual,” or “individual to be tested,” as used in 49 CFR 40, means an applicant or a school bus driver as defined at A.A.C. R17-9-101.
  - ii. “Employer” has the same meaning as at A.A.C. R17-9-101.
    - b. 49 CFR 382.107
      - i. “Commercial motor vehicle” has the same meaning as at A.R.S. § 28- ~~3001-3~~ 3001(3).
      - ii. “Driver” means a school bus driver as defined at A.A.C. R17-9-101.
      - iii. “Employer” has the same meaning as at A.A.C. R17-9-101.
      - iv. “Performing a safety-sensitive function” means any time during which a school bus driver is on-duty except when the school bus driver is being compensated by an entity other than the employer.
      - v. “Safety-sensitive function” means any activity for which a school bus driver is on-duty except when the school bus driver is performing an activity for and being compensated by an entity other than the employer.
    - c. 49 CFR 382.207. In both sentences, the word “four” is changed to “eight.”
    - d. ~~49 CFR 382.301(a) is changed to read: Prior to the first time a driver performs a safety sensitive function for an employer, the driver shall undergo testing for controlled substances. An employer shall not allow a driver to perform a safety sensitive function unless the driver has received a controlled substances test result from the medical review officer indicating a verified negative test result.~~
    - e d. 49 CFR 382.301(b), (c), and (d): Delete these subsections.
    - f e. 49 CFR 382.303(a) and (b): ~~Delete~~ Change the word “occurrence” to “accident,” as defined in R17-9-101, and delete the words “operating on a public road in commerce.”
    - g f. 49 CFR 382.303(a)(1) and (b)(1): Delete the words “, if the accident involved the loss of human life”
    - h g. 49 CFR 382.303(a)(2) and (b)(2): Delete the words “, if the accident involved:”
    - i h. 49 CFR 382.303(a)(2)(i) and (ii) and (a)(3) (b)(2)(i) and (ii): Delete these subsections.
    - i. 49 CFR 382.303 (c): In the table, in the column headed “Test must be performed by employer,” change “No” to “Yes.”
  - 2- ~~An employer shall test an applicant or school bus driver for use of barbiturates, benzodiazepines, methadone, and propoxyphene using the procedure in 49 CFR 40. As required by 49 CFR 40.21, when testing for barbiturates, benzodiazepines, methadone, and propoxyphene, the employer shall use a urine sample that is collected separate from the urine sample used to test for marijuana, cocaine, opiates, amphetamines, and phenyleclidine. To provide two separate urine samples, a donor shall urinate into two collection containers.~~
  - 3- ~~The employer shall ensure that each school bus driver is tested for use of controlled substances at least once every 12 months and when requested to do so by the Department. Controlled substances testing conducted after the initial or screening test may be conducted on a random basis.~~
  2. In addition to the testing required by 49 CFR 382, an applicant shall submit to testing for the use of marijuana,

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cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.

3. In addition to the testing required by 49 CFR 382, a school bus driver shall submit annually to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.
4. The employer shall ensure that a school bus driver is tested for use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, or propoxyphene or alcohol when required to do so by these rules or when requested by the Department.
4. 5. The employer shall submit any and all negative results of ~~controlled substances and alcohol~~ testing done under subsection (C) to the Department within ~~90~~ 30 days of the date of testing or within 12 months of the school bus driver's previous test, whichever is sooner, by providing the Department a copy of the report submitted to the employer by the entity that conducted the testing.
5. 6. The employer shall immediately notify the Department by telephone of any and all positive results of ~~controlled substances and alcohol~~ testing done under subsection (C) and shall submit to the Department within five days a copy of the report submitted to the employer by the entity that conducted the testing.

**D. Physical performance test**

1. An applicant shall pass a physical performance test that consists of the following eight standards:
  - a. Climbing and descending the steps of a school bus three times in 30 seconds;
  - b. Alternately activating the throttle and the service-brake system of a school bus 10 times in 10 seconds;
  - c. Depressing and holding the clutch, if applicable, and service-brake system of a school bus for three seconds, five consecutive times;
  - d. Opening and closing a manually operated service door three times without stopping. If the school bus has an automatic service door, operate the manual override of the service door;
  - e. Operating at least two hand controls, one on each side of the steering wheel, within eight seconds while maintaining control of a moving school bus;
  - f. Starting in a seat-belted position, exit a school bus from the rear-most floor-level emergency exit within 20 seconds;
  - g. Carrying or dragging a 125-pound object 30 feet in 30 seconds; and
  - h. Lowering a 30-pound object from a floor-level emergency exit to the ground and lifting the same object from the ground to the school bus floor.
2. A school bus driver who is certified on the effective date of this subsection shall pass the physical performance test within one year from the effective date of this subsection.
3. A school bus driver shall pass the physical performance test again no later than 24 months after previously passing the physical performance test.
4. An applicant or school bus driver who fails the physical performance test may take the test again after 24 hours. An applicant or school bus driver may take the physical performance test no more than three times in 90 days. If an applicant fails the physical performance test on the third attempt, the Department shall not further consider the applicant for certification unless the applicant complies again with the requirements of this Section.
5. The employer shall ensure that a school bus driver who fails the physical performance test does not operate a school bus until the school bus driver passes the physical performance test.
6. If a school bus driver takes and fails the physical performance test three times, the Department shall cancel the school bus driver's certification.
7. An employer shall ensure that the physical performance test is administered by a person who has completed Department-authorized training, using the largest type of school bus that an applicant or school bus driver may be required to operate.
8. A person who administers the physical performance test shall either pass or fail the applicant or school bus driver taking the test, complete the physical performance test form, and submit the completed form to the Department and the employer within seven days of the physical performance test.

**~~D.~~ E. Driving record.**

1. During the 24 months before the date of application or during any 24-month period while certified as a school bus driver, an applicant or school bus driver shall not accumulate eight or more points against a driving record in this state using the point system contained in A.A.C. ~~R17-4-506~~ R17-4-404.
2. During the 10 years before the date of application, an applicant shall not have repeatedly received citations for violation of traffic law.

**~~E.~~ F. Training requirements of a school bus driver**

1. Before being certified by the Department as a school bus driver, an applicant shall complete a minimum of 14 hours of classroom training in the following:
  - a. State and federal traffic laws,
  - b. Behind-the-wheel driving operations,

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- c. School bus driver's responsibilities to passengers and school,
  - d. Inspections and operations checks,
  - e. Records and reports,
  - f. Special needs transportation, and
  - g. Accidents and emergencies.
2. ~~Classroom~~ An employer shall ensure that classroom training shall be is taught by a classroom instructor who is qualified under R17-9-103.
  3. At least seven days before classroom training, the classroom instructor shall notify the Department in writing of the date, time, and location of classroom training. The classroom instructor shall notify the Department by any means available at least 24 hours before the date, time, or location of classroom training is changed or canceled.
  4. After completion of classroom training, the classroom instructor shall administer to the applicant a written examination standardized by the Department.
    - a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in subsection ~~(E)(4)~~ (F)(1).
    - b. Each question has a value of ~~2~~ two points. To pass the examination an applicant shall receive a score that equals or exceeds 80% of the total possible score.
    - c. If an applicant is unable to read or speak English, the employer shall arrange to have the examination administered orally to the applicant in the language with which the applicant is most familiar.
    - d. If an applicant does not pass the examination on the first attempt, the applicant may take an examination two more times within 12 months of the first attempt. A different examination shall be administered to an applicant who is taking an examination for the second or third time. The period between examinations shall be a minimum of 24 hours. If the applicant fails the examination on the third attempt, the applicant shall be considered further only if the applicant complies again with the requirements in this Section.
  5. The classroom instructor shall submit the following information in a written report to the Department and the employer within seven days from the date of the conclusion of a classroom training course:
    - a. Instructor's name,
    - b. Instructor's ~~certification~~ identification number,
    - c. Date of training,
    - d. Location of training,
    - e. Number of hours of training taught by the classroom instructor.
    - ~~e.~~ f. Each applicant's name, and
    - ~~f.~~ g. Each applicant's examination score.
  6. In addition to the report required under subsection (F)(5), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a classroom training course, a classroom-training course log that includes:
    - a. Instructor's name.
    - b. Instructor's identification number.
    - c. Date of the training course.
    - d. Name of each applicant attending the training course.
    - e. Subject matter taught in each hour, and
    - f. Which hours of training were attended by each applicant.
  - ~~6.~~ 7. In addition to the classroom training, an applicant shall complete behind-the-wheel training consisting of a minimum of 20 hours operating a school bus in Arizona.
    - a. An employer shall ensure that behind-the-wheel training is taught by a behind-the-wheel instructor who is qualified under R17-9-103.
    - ~~a~~ b. During Behind behind-the-wheel training, shall be taught by a behind-the-wheel instructor who is shall be present and observing the applicant while the applicant is operating the school bus.
    - ~~b~~ c. Only The employer shall ensure that no one except the applicant, behind-the-wheel instructor, employer, and Department employees shall be are aboard the school bus while the applicant actually operates the school bus.
    - d. The behind-the-wheel instructor shall maintain and submit to the employer within seven days from the conclusion of the applicant's behind-the-wheel training, a behind-the-wheel training log that includes:
      - i. Instructor's name.
      - ii. Instructor's identification number.
      - iii. Applicant's name.
      - iv. Date of each behind-the-wheel training session, and
      - v. Actual number of hours at each training session that the applicant operates a school bus.
    - ~~e~~ e. At the conclusion of behind-the-wheel training, the behind-the-wheel instructor shall use a copy of the Proof of Completion of Behind-the-wheel Training and Driving Test form to administer the driving test in Exhibit A to the applicant the driving test described on the form. The driving test shall measure the applicant's ability to oper-

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ate a school bus safely and in a manner consistent with state law. The behind-the-wheel instructor shall either pass or fail the applicant and submit the ~~results in writing~~ completed form to the Department and the employer within seven days of the driving test.

~~F.G.~~ First aid and cardiopulmonary resuscitation

1. Before being certified, an applicant shall complete classroom instruction in cardiopulmonary resuscitation and basic first aid. The instruction in cardiopulmonary resuscitation shall include performing cardiopulmonary resuscitation on adults, children, and infants.
2. The instruction shall be conducted by an individual currently certified as an instructor in first aid and cardiopulmonary resuscitation by a program approved by a nationally recognized organization such as the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, or Arizona Bureau of Mines; by an emergency medical technician licensed by Arizona; or by an agency of the U.S. government.
3. An applicant shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card issued to the applicant or other written documentation as proof of completion of the first-aid and cardiopulmonary resuscitation training.
4. A school bus driver shall renew first-aid and cardiopulmonary resuscitation instruction before expiration of the current training. Renewal instruction shall be provided by an individual described in subsection ~~(F)(2)~~ (G)(2). The school bus driver shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card or other written documentation as proof of renewal of training.

~~G.H.~~ The Department shall process an application for certification as a school bus driver under R17-9-109.

~~H.I.~~ Refresher training

1. A school bus driver shall have refresher training no later than 24 months following completion of the training required by subsection ~~(E)~~ (F). Refresher training shall consist of a minimum of 6 1/2 hours of classroom training in the topics listed in subsection ~~(E)(1)~~ (F)(1).
2. After completing the first refresher training, the school bus driver shall complete a minimum of 6 1/2 hours of classroom training in the topics listed in subsection ~~(E)(1)~~ (F)(1) every 24 months following the last refresher training.
3. An employer shall ensure that refresher training is taught by a classroom instructor who is qualified under R17-9-103.
- ~~3.~~ 4. A classroom instructor shall teach refresher training and shall submit the following information in a written report to the Department and the employer within ~~45~~ seven days from completion of the refresher training:
  - a. Instructor's name,
  - b. Instructor's ~~certification~~ identification number,
  - c. Date of training,
  - d. Location of training,
  - e. Number of hours of training taught by the classroom instructor.
  - ~~e.~~ f. Each school bus driver's name, and
  - ~~f.~~ g. Each school bus driver's certification number.
5. In addition to the report required under subsection (I)(4), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a refresher training course, a refresher-training course log that includes:
  - a. Instructor's name,
  - b. Instructor's identification number,
  - c. Date of the refresher training course,
  - d. Name and certification number of each school bus driver attending the refresher training course,
  - e. Subject matter taught in each hour, and
  - f. Which hours of refresher training were attended by each school bus driver.

~~I.J.~~ Records

1. The employer shall maintain qualification and training records of an applicant who is certified and of a school bus driver who terminates employment, and qualification records of an applicant who is denied certification, for 24 months from the date of certification, termination of employment, or denial of certification.
- ~~2. The employer shall maintain refresher training records of a school bus driver for 24 months from the date of completion of each refresher training course.~~
2. The employer shall maintain records of testing required under subsection (C) in accordance with 49 CFR 382.401. In this subsection, "controlled substances," as used in 49 CFR 382.401, means marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene.
3. The employer shall transfer ~~qualification and training~~ the records of a school bus driver to a subsequent employer upon written request by the subsequent employer or school bus driver.
4. Qualification records include:
  - a. Application,
  - b. Driving record, ~~and~~
  - c. Copy of physical examination form, ~~and controlled substance test results.~~

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- d. Physical performance test form.
- 5. Training records include:
  - a. ~~An applicant's initial training date and the name and certification number of the instructor~~ A copy of the classroom-training course log required under subsection (F)(6) that shows the applicant's attendance,
  - b. ~~A school bus driver's refresher training date and the name and certification of the classroom instructor~~ A copy of the refresher-training course log required under subsection (I)(5) that shows the school bus driver's attendance,
  - c. ~~Classroom and behind-the-wheel~~ The classroom training examination scores score,
  - d. The applicant's behind-the-wheel training log.
  - e. The Proof of Completion of Behind-the-wheel Training and Driving Test form.
  - ~~f.~~ A copy of the first-aid card and cardiopulmonary resuscitation card or other written documentation of completion of first-aid and cardiopulmonary resuscitation training, and
  - e g. A copy of the school bus driver certification card issued by the Department.

**~~J.~~ K.** Denial, cancellation, or suspension of certificate

1. Based on an assessment of the totality of the circumstances, the Department may deny a certificate to an applicant or may cancel or suspend a certificate of a school bus driver for:
  - a. Failing to meet or comply with the requirements of this Article;
  - b. Being convicted of or subject to an outstanding warrant for any felony;
  - c. Being convicted of or subject to an outstanding warrant for a misdemeanor reasonably related to the occupation of a school bus driver including:
    - i. Civil traffic violation (A.R.S. § 28-1591 et seq.);
    - ii. Driving under the influence (A.R.S. § 28-1381 et seq.);
    - iii. Any sexual offense (A.R.S. § 13-1401 et seq.);
    - iv. Any abuse of a child (A.R.S. § 13-3623); or
    - v. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.).
  - d. Providing false, incomplete, or misleading information to the Department;
  - e. ~~Under A.R.S. § 28-1381, driving~~ Driving or in actual physical control of a school bus while under the influence of intoxicating liquor or drugs a circumstance listed in A.R.S. § 28-1381(A); or
  - f. Under A.R.S. §§ 28-3301 through ~~28-3320~~ 28-3322, having a commercial driver license canceled, suspended, revoked, or denied.
2. An applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended may request a hearing within 30 days from the date of receipt of the notice of the denial, cancellation, or suspension. The hearing shall be conducted according to the procedures contained in A.R.S. Title 41, Chapter 6, Article 10.
3. The Department shall inform an applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended of the amount of time that must elapse before the applicant or the school bus driver may reapply for certification. The Department shall include this information in the notice of denial, cancellation, or suspension and the notice of final order, if any, served on the applicant or school bus driver. In determining the amount of time that must elapse before reapplication, the Department shall consider:
  - a. The seriousness of the offense leading to denial, cancellation, or suspension;
  - b. The frequency with which the offense occurred; and
  - c. The amount of time required to correct the offense.

**~~K.~~ L.** If a school bus driver is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a school bus driver transfers employment from one employer to a second employer, within 14 days of the transfer the second employer shall provide written notice to the Department of the:

1. School bus driver's name,
2. School bus driver's certification number,
3. Name of the transferring employer, and
4. Effective date of the transfer.

**R17-9-103. ~~Certification~~ Certification Qualification of Classroom and Behind-the-wheel Instructors**

- A.** ~~Before being certified~~ To be qualified as a classroom instructor, an ~~applicant~~ applicant individual shall:
1. Submit to the Department ~~an application through the employer.~~ the following two letters:
    - a. A letter from, signed, and dated by the ~~applicant~~ applicant individual that states the ~~applicant's~~ applicant's individual's:
      - ~~a.~~ i. Name, home address, and home phone number;
      - ~~b.~~ ii. Social security number;
      - ~~c.~~ iii. Date of birth;
      - ~~d.~~ iv. Current employer's name, address, and phone number; and
      - ~~e.~~ v. Dates of all previous ~~applications~~ letters submitted under this subsection; and
    2. ~~Submit a b.~~ A letter to the Department from the current employer recommending that the ~~applicant~~ applicant individual be considered as a classroom instructor; and
    3. ~~2.~~ Pass a written examination standardized by the Department:

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- a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R17-9-102 (E)(1).
- b. Each question has a value of ~~2~~ two points. To pass the examination, an ~~applicant~~ applicant individual shall receive a score that equals or exceeds 90% of the total possible score.
- c. If an ~~applicant~~ applicant individual taking the written examination is unable to read or speak English, the employer shall arrange to have the examination administered orally ~~to the applicant~~ in the language with which the ~~applicant~~ applicant individual is most familiar.
- d. If an ~~applicant~~ applicant individual does not pass the examination, the ~~applicant~~ applicant individual may take a second examination that is different from the first examination.
- e. If ~~the applicant~~ an individual fails to pass the second examination, the ~~applicant~~ applicant individual may receive further consideration by submitting ~~a new application and documents required by these rules~~ again the letters required by subsection (A)(1) and taking the written examination required by this subsection.
- f. The ~~classroom instructor~~ employer shall submit each ~~applicant's~~ applicant's individual's examination score to the Department within seven days from the date of the examination.

~~B.~~ The Department shall process an application for certification as a classroom instructor under R17-9-109.

~~C. B.~~ To maintain certification by the Department remain qualified as a classroom instructor, a classroom instructor shall teach a minimum of 12 hours of classroom or refresher training every 24 months from the date of certification the classroom instructor is first recognized by the Department as qualified. The classroom instructor shall submit the following written documentation to the Department within 15 days of completion of a training program:

1. ~~Name and certification number of classroom instructor;~~
2. ~~Location of training provided;~~
3. ~~Subject matter of training provided;~~
4. ~~Date of training; and~~
5. ~~Number of hours of training completed.~~

~~D. C.~~ Before being certified To be qualified as a behind-the-wheel instructor, an applicant individual shall:

1. ~~Be certified continuously as a school bus driver in Arizona for the 12 months immediately preceding the application before submitting the letters described in subsection (C)(2) and be employed as a certified school bus driver at the time of application qualification as a behind-the-wheel instructor;~~
2. ~~Submit an application to the Department through the employer, the following two letters:~~
  - a. ~~A letter from,~~ signed, and dated by the ~~applicant~~ applicant individual that states the ~~applicant's~~ applicant's individual's:
    - ~~a. i.~~ Name, home address, and home phone number;
    - ~~b. ii.~~ Social security number;
    - ~~c. iii.~~ Commercial driver license number;
    - ~~d. iv.~~ Current employer's name, address, and phone number; and
    - ~~e. v.~~ Dates of all previous applications letters submitted under this subsection; and
3. ~~Submit a b. A letter to the Department from the current employer recommending that the applicant individual be considered as a behind-the-wheel instructor; and~~
4. ~~3.~~ Pass a written examination standardized by the Department.

- a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R17-9-102(~~E~~ F)(1):
- b. Each question has a value of ~~2~~ two points. To pass the examination, an ~~applicant~~ applicant individual shall receive a score that equals or exceeds 80% of the total possible score.
- c. If an ~~applicant~~ applicant individual is unable to read or speak English, the employer shall arrange to have the examination administered orally ~~to the applicant~~ in the language with which the ~~applicant~~ applicant individual is most familiar.
- d. If an ~~applicant~~ applicant individual does not pass the examination, the ~~applicant~~ applicant individual may take a second examination that is different from the first examination.
- e. If ~~the applicant~~ an individual fails to pass the second examination, the ~~applicant~~ applicant individual may receive further consideration by submitting ~~a new application and documents required by these rules~~ again the letters required by subsection (C)(2) and taking the written examination required by this subsection.
- f. The ~~classroom instructor~~ employer shall submit each ~~applicant's~~ applicant's individual's examination score to the Department within seven days from the date of the examination.

~~E.~~ The Department shall process an application for certification as a behind-the-wheel instructor under R17-9-109.

~~F. D.~~ To maintain certification by the Department remain qualified as a behind-the-wheel instructor, a behind-the-wheel instructor shall maintain certification as a school bus driver in this state and teach a minimum of 12 hours of behind-the-wheel training every 24 months from the date of certification the behind-the-wheel instructor is first recognized by the Department as qualified.

~~G. E.~~ Records

1. The employer shall maintain the following records for each classroom and behind-the-wheel instructor for 24 months from the date ~~of certification~~ the instructor is first recognized by the Department as qualified.

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- a. ~~Application Letter~~ submitted under subsection (A)(1)(a) or (C)(2)(a).
  - b. ~~Driving record;~~
  - e. ~~Letters b. Letter~~ of recommendation submitted under subsection (A)(1)(b) or (C)(2)(b), and
  - d. ~~c. Examination scores score.~~
2. The Department shall maintain the documents required by ~~subsection (C)~~ under R17-9-102(F)(5) and (I)(4) for 24 months.

**H.F.** ~~Denial, cancellation, or suspension of certificate of classroom or behind-the-wheel instructor~~ The Department shall not recognize an individual as qualified to be a classroom or behind-the-wheel instructor if the individual:

- 1. ~~Based on an assessment of the totality of the circumstances, the Department may deny a certificate to an applicant or may cancel or suspend a certificate of a behind-the-wheel instructor for:~~
  - a. ~~Failing 1. Fails~~ to meet or comply with the requirements of this Article;
  - b. ~~Being 2. Is~~ convicted of or subject to an outstanding warrant for a felony;
  - e. ~~Being 3. Is~~ convicted of or subject to an outstanding warrant for a misdemeanor reasonably related to the occupation of a school bus driver, including:
    - i. ~~a. Civil traffic violation (A.R.S. § 28-1591 et seq.);~~
    - ii. ~~b. Driving under the influence (A.R.S. § 28-1381 et seq.);~~
    - iii. ~~c. Any sexual offense (A.R.S. § 13-1401 et seq.);~~
    - iv. ~~d. Any abuse of a child (A.R.S. § 13-3623); or~~
    - v. ~~e. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.);~~
  - d. ~~Providing 4. Provides~~ false, incomplete, or misleading information to the Department;
  - e. ~~5. Under A.R.S. § 28-1381, driving Drives or is in actual physical control of a school bus while under the influence of intoxicating liquor or drugs a circumstance listed in A.R.S. § 28-1381(A); or~~
  - f. ~~6. Under A.R.S. §§ 28-3301 through 28-3320 28-3322, having has~~ a commercial driver's license canceled, suspended, revoked, or denied.
- 2. ~~The Department shall deny a certificate to an applicant or shall cancel or suspend a certificate of a classroom instructor for:~~
  - a. ~~Failing to meet or comply with the requirements of this Article; or~~
  - b. ~~Providing false, incomplete, or misleading information to the Department.~~
- 4. ~~An applicant who is denied a certificate or an instructor whose certificate is canceled or suspended may request a hearing within 30 days from the date of receipt of the notice of the denial, cancellation, or suspension. The hearing shall be conducted according to the procedures contained in A.R.S. Title 41, Chapter 6, Article 10.~~
- 5. ~~The Department shall inform an applicant who is denied a certificate or an instructor whose certificate is canceled or suspended of the amount of time that must elapse before the applicant or instructor may reapply for certification. The Department shall include this information in the notice of denial, cancellation, or suspension and the notice of final order, if any, served on the applicant or instructor. In determining the amount of time that must elapse before reapplication, the Department shall consider:~~
  - a. ~~The seriousness of the offense leading to denial, cancellation, or suspension;~~
  - b. ~~The frequency with which the offense occurred; and~~
  - e. ~~The amount of time required to correct the offense.~~

**I.G.** If a classroom or behind-the-wheel instructor is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a classroom or behind-the-wheel instructor transfers employment from one employer to a second employer, within seven days of the transfer the second employer shall provide written notice to the Department of the:

- 1. Name of the classroom or behind-the-wheel instructor,
- 2. ~~Certification~~ Identification number of the classroom or behind-the-wheel instructor,
- 3. Name of the transferring employer, and
- 4. Effective date of the transfer.

**R17-9-104. Minimum Standards for School Bus Operation**

- A. A school bus driver shall perform operations checks of a school bus as required by A.A.C. R17-9-108.
- B. Loading or unloading of passengers:
  - 1. As of February 16, 1996, an 8-lamp system as described in A.A.C. R17-9-107(15) shall be installed on a school bus before it is introduced into Arizona. When preparing to stop a school bus on a street or highway, the school bus driver shall activate the alternately flashing amber lamps of an 8-lamp system or the alternately flashing red lamps of a 4-lamp system for a minimum distance of 100 feet, in accordance with A.R.S. § 28-930(B). Whenever the school bus is stopped on a street or highway to load or unload passengers, the school bus driver shall deactivate the alternately flashing amber lamps and activate the alternately flashing red lamps of an 8-lamp system, and extend the stop arm and open the service door.
  - 2. When a school bus driver stops the school bus to load or unload passengers, the school bus driver shall set the parking brake and place the transmission in neutral.

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3. The distance between stops for the purpose of loading or unloading passengers shall be no less than 600 feet, unless the school determines that more frequent stops are necessary for safety. The school bus driver shall stop the school bus as near the right edge of the traveled portion of the street or highway as possible.
  4. A school bus driver shall not load or unload passengers on the traffic side of the bus.
  5. When a school bus driver loads or unloads passengers who must cross a street or highway at a location other than an intersection, the passengers shall cross at least 10 feet in front of the front bumper of the school bus. The school bus driver shall not permit passengers who must cross a street or highway to be unloaded from the school bus until all traffic to the front and rear of the school bus is stopped. The school bus driver shall not move the school bus until all passengers have crossed the street or highway.
  6. In intersections that use lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 100 feet of the traffic control signal so the passengers may cross with the traffic control signal, either before or after the school bus proceeds.
  7. In intersections without lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 50 feet of the intersection so the passengers may cross at the intersection, either before or after the school bus proceeds.
  8. A school bus driver shall not stop a school bus on an interstate highway for the purpose of loading or unloading passengers, except that:
    - a. A school bus stop may be established on a frontage road that parallels an interstate highway if no passenger is allowed to cross a divided highway.
    - b. A school bus may stop in a safety rest area as defined by A.R.S. § 28-7901(8) that is part of or adjacent to an interstate highway.
  9. A school bus driver shall load or unload passengers on school grounds only in an area designated by the school and marked with a sign as a school bus loading area.
  10. During loading or unloading of passengers at a designated school bus loading area at a school, the school shall restrict the loading area to school buses, passengers, and school employees assisting in the loading or unloading of passengers.
  11. A school shall allow passengers in a designated school bus loading area only when the passengers are being loaded on or unloaded from a school bus.
  12. A school shall designate all school bus loading areas at locations that prevent backing of the school bus.
  13. In areas at a school not designated as a school bus loading area, a school bus driver shall not back upon or adjacent to the school grounds unless an individual authorized by the school bus driver directs the backing procedure while standing at the rear of the school bus in a position visible to the school bus driver. This provision does not apply to a school bus garage or school bus storage area where passengers are not allowed.
  14. Immediately before a school bus driver engages in backing a school bus, the school bus driver shall sound the horn to warn motorists and pedestrians of the backing procedure. This provision does not apply if the school bus is equipped with an alarm that operates automatically when the school bus is backing.
  15. In addition to the requirements for railroad grade crossings contained in A.R.S. § 28-853, a school bus driver shall comply with the following:
    - a. Use hazard warning lights as described in A.R.S. § 28-947 (D) within a minimum of 100 feet of ~~all a~~ a railroad grade ~~crossings~~ crossing to warn motorists of an intended stop.
    - b. Shut off any radio, compact-disc player, and other source of sound within 50 feet of a railroad grade crossing.
    - c. Stop the school bus, with or without passengers aboard, at a railroad grade ~~crossings~~ crossing when traffic at the railroad grade crossing is not directed by a police officer.
    - d. While stopped at a railroad grade crossing at which traffic is not directed by a police officer, completely open the service door and the window to the left of the driver and, by hearing and sight, determine that it is safe to cross. Before proceeding, close the service door.
    - e. Do not stop to load or unload passengers within 200 feet of a railroad grade crossing. This provision does not prohibit stops at a railroad station or on a highway that parallels the railroad tracks.
  16. When a school bus driver loads a wheelchair passenger on a school bus, the school bus driver shall secure both the wheelchair and the wheelchair passenger using the systems described in R17-9-105(E).
- C. An employer shall not allow or require a school bus driver to drive a school bus nor shall a school bus driver drive a school bus:
1. For more than 10 hours after having been off-duty for a minimum of eight consecutive hours;
  2. For any period after having been on-duty for 15 hours after having been off-duty for a minimum of eight consecutive hours;
  3. After having been on-duty 60 hours in any seven consecutive days if the employer does not operate school buses for seven consecutive days; or
  4. After having been on-duty 70 hours in any eight consecutive days if the employer operates school buses every day of the week.

D. Other requirements:

1. A school bus driver shall wear a seat belt whenever the school bus is in motion.
2. While operating a school bus, a school bus driver shall wear closed-toe, closed-heel shoes that will not interfere with driving the school bus safely or ~~with~~ performing other duties of the school bus driver.
3. A school bus driver shall comply with all state traffic laws while operating a school bus except that the school bus driver shall not exceed 65 miles per hour or the posted speed limit, whichever is less, when operating the school bus on an interstate highway.
4. Passengers shall comply with all instructions given to them by a school bus driver. A passenger or a non-passenger who boards ~~the~~ a school bus and refuses to comply with the school bus driver's instructions may be surrendered into the custody of a person who is authorized by the school to assume responsibility for the passenger or non-passenger.
5. All passengers shall sit with their backs against the seat backs, their legs facing towards the front of the school bus, and all parts of their bodies clear of all aisles whenever the school bus is in motion.
6. A school bus driver shall not transport in a school bus more passengers than the rated capacity stated by the school bus manufacturer.
7. A school bus driver shall close the service doors of a school bus before operating the school bus. The service doors shall remain closed whenever the school bus is in motion.
8. A school bus driver shall not place the transmission in neutral or coast with the clutch disengaged on a downhill grade.
9. The driver of a school bus equipped with a ~~2~~ two-speed axle shall not shift the axle while descending any hill posted with grade warning signs.
10. A school bus driver shall ensure that a school bus is not fueled in a closed building, while the school bus engine is running or while passengers are on board.
11. A school bus driver or passenger shall not use tobacco in any form on a school bus.
12. A school bus driver shall not carry on a school bus or consume any beverage containing any alcohol while on-duty with the employer or within eight hours before going on-duty with the employer.
13. A school bus driver shall not eat or drink on a school bus unless the school bus is completely stopped.
14. A school bus driver shall not at any time carry on a school bus or use a controlled substance.
15. A passenger shall not carry on a school bus, or consume while being transported in a school bus, any ~~controlled substance or any~~ beverage containing any alcohol.
16. A passenger shall not carry on a school bus or consume while being transported in a school bus, any dangerous or narcotic drug, as defined in A.R.S. § 13-3401, unless:
  - a. A medical practitioner authorized by the state to write a prescription for the dangerous or narcotic drug has prescribed the dangerous or narcotic drug for the passenger who is carrying or consuming it;
  - b. The school district governing board establishes written policies and procedures regarding the administration of a dangerous or narcotic drug by a trained district employee to a passenger who is being transported in a school bus; and
  - c. The parent or legal guardian of a passenger to whom a dangerous or narcotic drug is administered while being transported in a school bus provides prior written authorization for the dangerous or narcotic drug to be administered to the passenger by a trained district employee.
- ~~16.~~ 17. A school bus driver shall not assume responsibility for transporting any medication, whether prescription or over-the-counter, that belongs to a passenger.
- ~~17.~~ 18. A school bus driver shall not transport animals, insects, or reptiles in a school bus with the exception of service ~~dogs~~ animals, as defined at A.R.S. § 11-1024(G) (J), which assist disabled passengers.
- ~~18.~~ 19. Except for eyeglasses, a passenger or school bus driver shall not carry or transport glass objects on a school bus.
- ~~19.~~ 20. A school bus driver or passenger shall not carry on or transport in a school bus an explosive device, gun, knife, or other weapon as defined by school-district policy.
- ~~20.~~ 21. A passenger shall not place any part of the passenger's body out of a school bus window or door except when exiting the school bus.
- ~~21.~~ 22. When instruments or equipment related to musical or athletic events are transported on a school bus, the school bus driver shall transport them as follows:
  - a. Instruments or equipment shall not occupy seating space if needed for a passenger,
  - b. Instruments or equipment shall not be placed in the school bus driver's compartment or step-well of the school bus,
  - c. Instruments or equipment shall be under the passenger's control at all times or secured in the school bus, and
  - d. Instruments or equipment shall not block an aisle or emergency exit of the school bus at any time.
- ~~22.~~ 23. A passenger who carries onto a school bus an object other than an instrument or equipment related to musical or athletic events shall control the object at all times or secure the object in the school bus. If the passenger is not able to control or secure the object in the school bus, the passenger shall not carry the object onto the school bus.
- ~~23.~~ 24. A school bus driver shall ensure that all objects inside the school bus are under a passenger's control or secured in

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a manner that prevents the objects from causing physical injury to others or affecting the safe operation of the school bus.

- 24- ~~25.~~ A school bus driver shall not drive a school bus with a trailer or other vehicle attached to the school bus.
- 25- ~~26.~~ A school bus driver shall stop the school bus and check the wheels and tires for wear, damage, and inflation after every two continuous hours of driving.
- 26- ~~27.~~ All school buses shall have and school bus drivers shall use a ~~2~~ two-way voice communication system.
- 27- ~~28.~~ A school bus driver shall not wear an audio headset, earphones, or ear plugs, or use a cellular telephone when the school bus is in motion
- 28- ~~29.~~ Except when complying with R17-9-108(D), if a school bus driver leaves the driver's compartment, the school bus driver shall set the parking-brake system, place a standard transmission in either first or reverse gear, place an automatic transmission in park or neutral, and turn off the ignition and remove the ignition key from an ignition that uses a key, or set the ignition power-deactivation switch of an ignition that does not use a key.
- 29- ~~30.~~ Each time a school bus driver unloads passengers and it appears that no passengers remain on the school bus, the school bus driver shall inspect the interior of the school bus for passengers remaining and objects left on the school bus.
- 30- ~~31.~~ At least twice during every school year, a school shall conduct an evacuation drill of a school bus at the school that includes every passenger who rides a school bus and is in school on the day of the evacuation drill. At least 14 days before an evacuation drill, a school shall submit to the Department a written notice stating the date, time, and location of the evacuation drill. Each school bus driver shall participate in a minimum of two evacuation drills during every school year. Evacuation drills shall include:
- Practice and instruction in the location, use, and operation of the emergency exits, fire extinguishers, first aid equipment, windows as a means of escape, and communication systems;
  - Practice and instruction in when and how to approach, load, unload, and move away from the school bus a minimum of 100 feet;
  - Instructions on how weather-related hazards affect emergency procedures; and
  - Instructions on the importance of orderly conduct.
- 31- ~~32.~~ A white, flashing, strobe lamp as described in A.A.C. R17-9-107(15)(f) may be used only during conditions that produce low visibility or that are hazardous.
- 32- ~~33.~~ An owner shall ensure that no lock, except as provided in R17-9-107(8)(h), is installed on any school bus emergency exit or service door.
- 34- ~~34.~~ A school bus driver shall ensure that nothing obstructs or interferes with the use of any school bus emergency exit or service door.
- 33- ~~35.~~ ~~All~~ A school bus driver, passenger, or school administrator shall immediately report to the employer any violation of these rules or state statutes that the school bus driver, passenger, or school administrator reasonably believes threatens the health, safety, or welfare of a passenger.

E. Reports and recordkeeping:

- Immediately following any accident involving a school bus, the school bus driver shall report the accident to the employer.
- Immediately upon receiving notification of any accident involving a school bus, the employer shall notify the Department of the accident by telephone. The employer shall submit written verification of the accident to the Department within 72 hours of the telephone notification.
- Immediately upon becoming aware of a violation of these rules or state statutes that a reasonable person could conclude causes caused injury to or threatened the health, safety, or welfare of a passenger, the employer shall notify the Department of the violation by telephone. The employer shall submit a written report of the violation to the Department within 72 hours of the telephone notification.
- No later than 14 days after an evacuation drill, a school district shall submit to the Department a written report of the evacuation drill identifying the school district, participating school, date, and number of participants.
- From the date on which a record is created, the employer shall maintain for three years the following written records for each school bus driver:
  - On a daily basis, the period of time each school bus driver is on-duty for the employer including the date, each start and quit time, and the total number of hours on-duty for the employer.
  - On a daily basis, the total number of hours on-duty for an entity other than the employer during the previous seven days.
- A school bus driver who performs any compensated work for an entity other than the employer shall provide the employer, in writing, the name and telephone number of the entity and the number of hours the school bus driver works each day for the entity.
- A school bus driver who receives a citation, whether on-duty or off-duty, shall immediately inform the employer by telephone about the citation and shall submit a copy of the citation to the employer within five days.

**R17-9-109. Time-frames for Making Certification Determinations**

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- A. For certification as a school bus driver, ~~classroom instructor, or behind-the-wheel instructor~~, the time-frames required by A.R.S. § 41-1072 et seq. are:
  - 1. Overall time-frame: 60 days
  - 2. Administrative completeness review time-frame: 45 days
  - 3. Substantive review time-frame: 15 days
- B. An administratively complete application for certification as a school bus driver consists of all the information and documents listed in:
  - ~~1. R17-9-102(A) for a school bus driver,~~
  - ~~2. R17-9-103(A) for a classroom instructor, and~~
  - ~~3. R17-9-103(D) for a behind-the-wheel instructor.~~
- C. An administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Department receives an application.
  - 1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
  - 2. Within 120 days from the postmark date of the deficiency notice, the applicant shall submit to the Department the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the postmark date of the deficiency notice until the date the Department receives the missing documents and information.
  - 3. If the applicant fails to provide the missing documents and information within the time provided, the Department shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R17-9-102 ~~or R17-9-103~~.
  - 4. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.
- D. A substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the postmark date of the notice of administrative completeness.
  - 1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information.
  - 2. The applicant shall submit to the Department the additional information identified in the request for additional information within 20 days from the postmark date of the request for additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the postmark date of the request for additional information until the Department receives the additional information.
  - 3. Unless an applicant requests that the Department deny certification within the 20-day period in subsection (D)(2), the Department shall close the file of an applicant who fails to submit the additional information within the 20 days provided. An applicant whose file is closed and who wants to be certified shall apply again under R17-9-102 ~~or R17-9-103~~.
  - 4. When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to certify the applicant.
    - a. The Department shall deny certification if it determines that the applicant does not meet all substantive criteria for certification required by statute and rule. An applicant who is denied certification may appeal the Department's decision under A.R.S. § 41-1092 et seq. and any rules ~~adopted~~ made under A.R.S. § 41-1092.01(C)(4).
    - b. The Department shall grant certification if it determines that the applicant meets all substantive criteria for certification required by statute and rule.

**R17-9-112. Enforcement Audits**

- A.** To enforce the provisions of this Chapter, the Department may conduct an audit of any of the records required to be maintained under this Chapter. The audit may be conducted for cause or without cause.
- B.** The Department may enter an employer's or owner's place of business to conduct an audit.
- C.** An employer or owner shall make records available to the Department during regular business hours at the employer's or owner's place of business or at another mutually agreeable location.
- D.** Within 10 business days after completing an audit, the Department shall inform the employer or owner in writing of any concerns identified.
- E.** The Department and the employer or owner shall make a written agreement specifying the actions that must be taken to address the concerns identified by the audit and the time within which the actions will be taken.

Exhibit A. ~~Proof of Completion of Behind-the-wheel Training and Driving Test~~ **Repealed**

ARIZONA DEPARTMENT OF PUBLIC SAFETY  
~~PROOF OF COMPLETION OF BEHIND-THE-WHEEL TRAINING AND~~

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**DRIVING TEST**

A.R.S. § 28-3228 requires an applicant to “complete... behind the wheel training,” before being certified as a school bus driver. The behind the wheel instructor shall complete this form to show that the applicant has completed a minimum of 20 hours of behind the wheel training as required by A.A.C. R17-9-102(E)(6).

Applicant's Name \_\_\_\_\_ Date of Completion of Training \_\_\_\_\_  
 Employer/School Dist. \_\_\_\_\_ Employer No./Dist. No. \_\_\_\_\_

**Hours of training on each type of school bus:**

Type A \_\_\_\_\_  
 Type B \_\_\_\_\_  
 Type C \_\_\_\_\_  
 Type D \_\_\_\_\_  
 Special Needs (Type A, B, C, or D) \_\_\_\_\_

**ROAD TEST**

After completing a minimum of 20 hours of behind the wheel training, an applicant shall demonstrate the ability to operate a school bus and transport passengers safely by passing an operations test. The behind the wheel instructor shall accompany the applicant and rate the applicant's performance.

**INSTRUCTION**

This test shall be conducted on streets or highways. Simulated stops (passenger loading and unloading and railroad grade crossings) shall be in areas where traffic will not be disrupted.

**DRIVING TEST SCORE SHEET**

**A behind the wheel instructor shall place an X on a square if the applicant demonstrates competence in the following areas:**

**PRE-TRIP OPERATIONS CHECK**

Checks all items listed in R17-9-108(D)(1) and (2)   
 Fastens seat belt before moving the school bus

**GEAR SELECTION & CLUTCH**

Selects proper gear   
 Coordinates use of clutch & accelerator   
 Performs downshifting/double clutching procedures   
 Is able to start motion of school bus on a grade   
 Not applicable (automatic transmission)

**BRAKES**

Applies brakes smoothly   
 Observes air pressure, vacuum, or hydraulic gauge

**MIRRORS**

Checks for proper adjustment of outside and inside mirrors

**STOPS FOR RAILROADS**

Stops within 50 ft., but more than 15 ft., from nearest rail   
 Turns radio off and other sources of noise within 50 ft. of nearest rail   
 Activates hazard lamps no more than 100 ft. from railroad crossing   
 Stops, opens service door and driver's side window, looks and listens for trains in accordance with R17-9-104(B)(15)   
 Closes service door before moving across the railroad tracks   
 Crosses railroad crossing without changing gears of the school bus

**DRIVING TECHNIQUES**

Uses turn signals when changing lanes   
 Uses turn signals when making turns   
 Uses proper lanes when turning   
 Activates turn signal no less than 100 ft. before turn

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- Maintains distance between school bus and other vehicles appropriate for speed and traffic and weather conditions
- Drives at speed that is legal and appropriate for conditions
- Follows all rules when driving through school zone

**PASSENGER LOADING/UNLOADING**

- Properly uses 4 or 8 light system
- Extends stop arm when stopped
- Positions school bus in compliance with R17-9-104(B) when loading and unloading passengers

**BACKING**

- Complies with R17-9-104(B)(13) and (14)
- Uses assistance when backing adjacent to a school
- Sounds horn if there is no alarm that works automatically with backup lamps
- Observes backing procedure in all situations

**PARKING**

- Uses proper parking procedures
- Uses parking brake system properly
- Uses proper gear placement when parking

**The following require that an applicant be rejected:**

1. A chargeable accident during testing.
2. Instructor having to take controls of school bus because of unsafe driving performance.
3. Violation of A.R.S. Title 28 or this Chapter that could cause an accident or injury to passengers.

Based on the driving test given, I conclude that \_\_\_\_\_  
Applicant's Name

is  is not  qualified to operate a school bus and transport passengers safely.

\_\_\_\_\_  
Behind the wheel Instructor      Inst. Cert. No.      Date

\_\_\_\_\_  
Behind the wheel Instructor printed name

**NOTICE OF FINAL RULEMAKING**

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

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

[R05-06]

**PREAMBLE**

1. **Sections Affected**      **Rulemaking Action**  
R20-5-602      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. § 23-405(4)  
Implementing statute: A.R.S. § 23-410
3. **The effective date of the rules:**  
January 4, 2005  
To better preserve the safety and health of employees throughout the state of Arizona, the Division is proposing an immediate effective date. The rulemaking will preserve public safety and health by implementing the most current Federal Occupational Safety and Health standard for commercial diving operations for employees in general industry locations.
4. **A list of all previous notices appearing in the register addressing the Final Rule:**

Notices of Final Rulemaking

Notice of Rulemaking Docket Opening: 10 A.A.R., 2612, June 25, 2004  
Notice of Proposed Rulemaking: 10 A.A.R., 2935, July 23, 2004

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

Name: Patrick Ryan, Assistant Director  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: [ryan.pat@dol.gov](mailto:ryan.pat@dol.gov)

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

**A.A.C. R 20-5-602 The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910.**

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The Industrial Commission, Arizona Division of Occupational Safety and Health (ADOSH) is amending R20-5-602 by adopting amendments for 29 CFR 1910, the Federal Occupational Safety and Health Standards for General Industry, Subpart T, Commercial Diving Operations.

This rulemaking allows employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO standards. The rule applies only when these employees engage in recreational diving instruction and diving-guide duties; use an open-circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater-breathing apparatus supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen; dive to a maximum depth of 130 feet of sea water; and remain within the no-decompression limits specified for the partial pressure of nitrogen in the breathing-gas mixture. These alternate requirements essentially are the same as the terms of a variance granted by OSHA to Dixie Divers, Inc. in 1999.

Copies of the material are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington St., Room 203, Phoenix, Arizona 85007, and can be downloaded from the Federal OSHA web site [www.osha.gov](http://www.osha.gov).

**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:**

None

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

Not applicable

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

The Division has determined that these revisions will have little to no impact for affected industry groups and has determined the revisions to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 West Washington Street, Phoenix, Arizona 85007.

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

None

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

None

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

Not applicable.

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

R20-5-602. Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910.

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

Not applicable

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

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

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 191

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts ~~€~~ B through Z inclusive of the *Federal Occupational Safety and Health Standards for General Industry*, as published in 29 CFR 1910, with amendments as of ~~November 7, 2002~~ February 17, 2004, incorporated by reference, ~~and on file with the Office of the Secretary of State.~~ Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~November 7, 2002~~ February 17, 2004.