

Notices of Proposed Rulemaking

R4-29-407	Repeal
R4-29-408	Repeal
R4-29-409	Repeal
R4-29-410	Repeal
R4-29-412	Repeal
R4-29-413	Repeal
R4-29-414	Repeal
R4-29-415	Repeal
R4-29-417	Repeal
R4-29-418	Repeal
Article 5	Repeal
R4-29-501	Repeal
R4-29-502	Repeal
R4-29-503	Repeal
R4-29-504	Repeal
Appendix A	Repeal

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

Authorizing statute: A.R.S. § 32-2304(A)(1)

Implementing statute: A.R.S. § § 32-2301 through 32-2329

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 3381, September 15, 2006

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

Name: Lisa Gervase, Executive Director
Address: Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5514
Telephone: (602) 255-3664
Fax: (602) 255-1281
E-mail: Lisagervase@sb.state.az.us

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

The Commission is repealing all of its rules, which were made in 1992, because they are inconsistent with statute and industry and agency practice. In another rulemaking, the Commission is making new rules. This rulemaking is partially in response to a five-year review report approved by the Council on June 6, 2006.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or 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 Commission does not intend to review or rely on any studies.

7. 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

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

Under A.R.S. § 41-1055(D)(3), an economic, small business, and consumer impact statement is not required because repealing the Commission's rules decreases monitoring of and recordkeeping and reporting by licensees.

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

Name: Lisa Gervase, Executive Director
Address: Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5514
Telephone: (602) 255-3664
Fax: (602) 255-1281
E-mail: Lisagervase@sb.state.az.us

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: November 9, 2006
Time: 9:00 a.m.
Location: Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5514

The rulemaking record will close at the end of the oral proceeding on November 9, 2006.

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

None

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. STRUCTURAL PEST CONTROL COMMISSION

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

R4-29-101. ~~Definitions~~ Repealed
R4-29-102. ~~Classification of Structural Pest Control~~ Repealed
R4-29-104. ~~Joint Responsibility~~ Repealed
R4-29-107. ~~Complaints~~ Repealed
R4-29-108. ~~Licensing Time frames~~ Repealed
Table 1. ~~Time frames~~ Repealed

ARTICLE 2. LICENSURE, QUALIFICATION, CERTIFICATION, AND REGISTRATION REPEALED

Section

R4-29-201. ~~General Provisions~~ Repealed
R4-29-202. ~~Renewals of Licenses, Qualifications, Certifications and Registrations~~ Repealed
R4-29-203. ~~Structural Commercial Applicator Certification~~ Repealed
R4-29-204. ~~Qualifying Party Qualification and Pest Control Advisor License~~ Repealed
R4-29-205. ~~Inactive Qualifying Party Status~~ Repealed
R4-29-206. ~~Business License, General Provisions~~ Repealed
R4-29-207. ~~Display and Use of License Name and Number~~ Repealed
R4-29-208. ~~Qualifying Party or Pest Control Advisor Required for Each Business~~ Repealed
R4-29-209. ~~Branch Office~~ Repealed
R4-29-211. ~~Schedule of Fees, Payments and Exemption~~ Repealed
R4-29-212. ~~Continuing Education Required for Qualifying Parties, Pest Control Advisors and Applicators~~ Repealed
R4-29-213. ~~Requirements for Providers of Continuing Education Programs~~ Repealed

ARTICLE 3. PESTICIDE USAGE REPEALED

Section

R4-29-301. ~~Misuse of Any Pesticide; Falsification of Any Pesticide Record~~ Repealed
R4-29-302. ~~Certified Applicator Required~~ Repealed
R4-29-303. ~~Direct Supervision of Noncertified Persons Required~~ Repealed
R4-29-304. ~~Protect Against Contamination~~ Repealed
R4-29-305. ~~Written Notification of Treatment Required~~ Repealed

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- R4-29-306. Notice of Intent to Apply Pesticides Repealed
- R4-29-307. Make and Preserve Treatment Records Repealed
- R4-29-308. Restricted Use Records Required Repealed
- R4-29-309. Records Required Within 24 Hours Repealed
- R4-29-310. General Provisions for Pesticide Usage Repealed
- R4-29-311. Provisions for Pesticide Storage Repealed
- R4-29-312. Pesticide Containers; Storage and Disposal Repealed
- R4-29-313. Pesticide Storage Facility Repealed
- R4-29-314. Pesticide Storage on Service Vehicles Repealed
- R4-29-315. Required on Service Vehicles Repealed

ARTICLE 4. ~~TERMITES AND OTHER WOOD-DESTROYING ORGANISMS~~ REPEALED

Section

- R4-29-401. Definitions Repealed
- R4-29-402. Chemicals Repealed
- R4-29-407. Preeconstruction Treatments; Establishment of Barriers; Soil Disturbed; Concrete Poured Prior to Treatment; Effective Date Repealed
- R4-29-408. Pretreatment Tagging and Records Required Repealed
- R4-29-409. Occurrence of Termites After a Pretreatment Repealed
- R4-29-410. Post construction Treatments for Subterranean Termites Repealed
- R4-29-412. Wood Infestation Reports; General Provisions Repealed
- R4-29-413. Wood Infestation Reports; Information Required Repealed
- R4-29-414. Wood Infestation Reports; Conditions Conducive Repealed
- R4-29-415. Supplemental Wood Infestation Reports Repealed
- R4-29-417. Termite Action Registration Report Repealed
- R4-29-418. Termite Action Registration Report Fee Repealed

ARTICLE 5. ~~HEARINGS, SETTLEMENT CONFERENCES, AND CONSENT ORDERS~~ REPEALED

Section

- R4-29-501. Hearings and Hearing Procedures Repealed
- R4-29-502. Review or Rehearing of Commission Decisions Repealed
- R4-29-503. Settlement Conferences Repealed
- R4-29-504. Settlement Conference Consent Orders Repealed
- Appendix A. Wood infestation report form Repealed

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R4-29-101. ~~Definitions~~ Repealed

~~Words defined in A.R.S. § 32-2301 or 32-2331 have the same meaning when used in this Chapter, and unless the context requires otherwise:-~~

- ~~1. "Advertisement" means a written or oral publication, dissemination, solicitation or circulation, including business cards and telephone directory display advertisements, which is intended to directly or indirectly induce a person to enter into an agreement for pest control services.~~
- ~~2. "Advisor" means pest control advisor.~~
- ~~3. "Certified applicator" means a "structural commercial applicator", "commercial applicator", or "applicator".~~
- ~~4. "Commercial applicator" means a "structural commercial applicator", "certified applicator", or "applicator".~~
- ~~5. "Commercial establishment" means an area or site, other than an institutional establishment, where business activities occur.~~
- ~~6. "Company" means the person or company who holds a business license as defined in A.R.S. § 32-2301.~~
- ~~7. "Contract" means an agreement with a customer, including a warranty or guarantee concerning service or the results thereof, pertaining to the application of a pesticide or pest management procedure to the customer's property.~~
- ~~8. "Control" means exterminating, eradicating, injuring, destroying, killing, repelling, sterilizing, or removing, or a combination of these activities.~~
- ~~9. "Crack and crevice treatment" means the application of pesticide directly into a crack, crevice, expansion joint, between different elements of construction, between equipment and floors, or into an opening that leads into voids~~

- such as hollow walls, equipment legs and bases, conduits, motor housings, or junction or switch boxes, where pests may be present.
10. ~~“Entire structure” means all critical areas as defined in R4 29 410 and as specified on product labeling for both the interior and exterior of the structure.~~
 11. ~~“Fog or fogging” means aerosolized particles of a pesticide dispersed by means of a flammable, aerosolizing thermal or other generator capable of producing particles of less than ten microns in diameter.~~
 12. ~~“Food handling establishment” means a place, other than a private residence, in which food is held, processed, prepared, or served.~~
 - a. ~~Food areas of food handling establishments include areas of receiving, serving, storage, packaging, preparing, edible waste storage, and closed processing systems.~~
 - b. ~~Nonfood areas of food handling establishments include garbage rooms, lavatories, floor drains, entrances and vestibules, offices, locker rooms, machine rooms, boiler rooms, garages, mop closets, and storage after canning or bottling.~~
 13. ~~“Fumigant” means a chemical substance having a vapor pressure of greater than five millimeters of mercury at 25 degrees Centigrade which is used for the destruction of plant or animal life.~~
 14. ~~“Fumigation” means the use of fumigants for the control of pests.~~
 15. ~~“Incidental” means the limited application of pesticides in conjunction with projects involving a contractual relationship for the development or maintenance of a property. When a commercial application of pesticides on a property is the only or predominant maintenance service performed throughout the contract period, such application is not considered incidental.~~
 16. ~~“Institutional establishment” means a property or facility that functions to provide a service to the general public or private organizations.~~
 17. ~~“Label” means the written, printed or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container or its wrappers or on or attached to a device.~~
 18. ~~“Labeling” means all labels and all other written, printed, or graphic matter authorized by the manufacturer or a state or federal agency that accompanies a pesticide or device, or is referred to on the label or in literature accompanying the pesticide or device, except where that reference is to current official publications of federal or state agencies, institutions, or agencies authorized by law to conduct research in the field of pesticides.~~
 19. ~~“Manner inconsistent with the label” means the use of a pesticide in a manner not permitted by the labeling. Uses of a pesticide as listed in paragraphs (a), (b), and (c) below are exempt from this definition unless the U.S. Environmental Protection Agency or the pesticide manufacturer has indicated, by means of written statements issued prior to treatment, that such use would not be permitted, or advisable, or would be deleterious to persons, animals or the environment. Exempted uses are the use of a pesticide that will eliminate or control a pest:~~
 - a. ~~At a dosage, concentration, or frequency less than specified on the labeling;~~
 - b. ~~For a target pest not identified on the labeling as long as the application site is specified and the labeling does not prohibit the use; or~~
 - e. ~~By a method of application not prohibited by the labeling.~~
 20. ~~“Post treatment” means the application of chemicals for the control of termites and other wood destroying organisms in existing structures.~~
 21. ~~“Pretreatment” means the application of a termiticide for subterranean termite control prior to the establishment of a permanent slab foundation construction or in conjunction with the establishment of footings and supports for a raised foundation construction.~~
 22. ~~“Structural commercial applicator” means a “commercial applicator”, “certified applicator”, or “applicator”.~~

R4-29-102. Classification of Structural Pest Control Repealed

For the purpose of this Chapter, the practice of structural pest control shall be classified as follows:

1. ~~Class A shall include the classifications B, C, D, E, and F.~~
2. ~~Class B shall be limited to the control of general terrestrial vertebrate and invertebrate pests which live in or about households and other structures but shall not include the control of wood destroying organisms and pests of turf and ornamental horticulture.~~
3. ~~Class C shall be limited to the control of wood destroying pests or organisms which occur in, on or about structures.~~
4. ~~Class D shall be limited to the use of fumigants as a method of structural pest control.~~
5. ~~Class E shall be limited to the control of terrestrial weeds around structures or in connection with an area used by persons for purposes other than as an agricultural area.~~
6. ~~Class F shall be limited to the control of vertebrate and invertebrate pests and diseases of plants, and the use of plant growth regulators on general ornamental horticultural plantings including turf intended for use by persons for purposes other than as an agricultural area.~~
7. ~~Class G shall limit the scope of an established classification to advising or making recommendations or inspection reports concerning the control of pests or control methods. The holder of a class G license shall not perform treat-~~

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ments.

8. Class H shall be limited to the application of pesticides directly to structural components of wood or wood products, which are not then part of an existing structure normally habitable by persons, to prevent or control wood degradation by wood destroying organisms which shall include fungi and bacteria.
9. Class I shall be limited to the use of pesticides and plant growth regulators in golf course management.
10. Class J shall be limited to the use of pesticides in an aquatic area which is used or is intended for use by persons for purposes other than as an agricultural area. Subclassifications may include control of vertebrate pests, invertebrate pests, and weeds in the aquatic environment.

R4-29-104. Joint Responsibility Repealed

~~Each company, qualifying party, advisor, applicator and registered employee is responsible for the acts or omissions of, and for compliance with the law, this Chapter and other lawful orders of the Commission by, persons under their supervision.~~

R4-29-107. Complaints Repealed

- ~~A. The qualifying party, pest control advisor or designated agent of a licensed company or other person against whom a complaint is logged, by or with the Commission, shall respond in writing and within 20 days of the date of notification by the Commission.~~
- ~~B. Health-related complaints received by the Commission, or Commission investigations that reveal a potential health concern, shall be referred to the Department of Health Services or other appropriate health-related agency and, as required, to the United States Environmental Protection Agency.~~

R4-29-108. Licensing Time-frames Repealed

- ~~A. Overall time frame. The Commission shall issue or deny a license within the overall time frames listed in Table 1 after receipt of an application. The overall time frame is the total of the number of days provided in the administrative completeness review and the substantive review.~~
- ~~B. Administrative completeness review.
 1. The applicable administrative completeness review time frame established in Table 1 begins on the date the Commission receives an application. The Commission shall notify the applicant in writing within the administrative completeness review time frame whether the application is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant within the administrative completeness review time frame, the Commission shall deem the application complete.
 2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time frame is suspended from the postmark date of the notice of missing information to the applicant until the date the Commission receives the information.
 3. If an applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may apply for 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 or at the end of the administrative completeness review period in Table 1, whichever occurs first.
 1. If the Commission 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 postmark date of the request until the Commission receives the information. If the applicant fails to provide the information identified in the written request within the additional information time period in Table 1, the Commission shall consider the application withdrawn unless the applicant requests in writing the application be denied.
 2. The Commission shall issue a written notice granting or denying a license within the substantive review time frame. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.~~

Table 1. ~~Time-frames (Calendar Days) Repealed~~

License	Authorities	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Applicator Certificate New/Renewal/Temporary	A.R.S. § 32-2332 A.R.S. § 32-2312 R4-29-203 R4-29-202	7	6 mos.	60	14	67
Business License New Renewal	A.R.S. § 32-2313 R4-29-206 R4-29-202	7 7	7 14	60 5	14 14	67 12
Qualifying Party New Renewal Temporary	A.R.S. § 32-2332 A.R.S. § 32-2314 R4-29-208 R4-29-202	7 7 7	6 mos. 6 mos. 7	60 14 60	14 14 14	67 21 67
Registered Employee	A.R.S. § 32-2315	14	14	60	14	74

ARTICLE 2. LICENSURE, QUALIFICATION, CERTIFICATION, AND REGISTRATION REPEALED

R4-29-201. ~~General Provisions Repealed~~

- ~~**A.** Persons who merely furnish information concerning general labeling and usage of a registered pesticide and do not make onsite recommendations for pest control shall not be deemed as holding themselves out as licensees or advisors for the purpose of this Chapter.~~
- ~~**B.** Lack of good moral character and reputation may be established by showing that a person has committed an act which, if committed by a licensee, qualifying party, applicator or registered employee of a pest control company, would be grounds for taking disciplinary action against the license, qualification, certification or registration of that individual.~~
- ~~**C.** Person who, while holding a valid license, qualification, or certification of this Commission, entered the active military service of the United States of America and who, within 100 days of honorable separation from such service, make application to the Commission for renewal of license, qualification, or certification, shall have their application processed as a timely renewal of such license, qualification, or certification.~~
- ~~**D.** A business license, qualifying party qualification, pest control advisor license, applicator certificate or employee registration shall not be assigned or transferred and shall be used only by the person or business to whom it was issued. A change in partnership, either by withdrawal or addition of partners, requires a new license and registrations.~~
- ~~**E.** Applications for licensure, qualification, certification and registration and renewals thereof and applications for all examinations shall be made on forms furnished by the Commission, completed in accordance with the instructions printed thereon, and accompanied by the fee set forth in R4-29-211.~~
- ~~**F.** Examinees shall be notified by letter from the Commission of the results of their examination.~~
- ~~**G.** Application forms provided by the Commission for licensure, qualification, certification and registration and renewals thereof shall require at least:

 - ~~1. For an original business license: The proposed name of the business, whether the business is a sole proprietorship, partnership or corporation; the full names and home addresses of the owner if a sole proprietorship, of all partners if a partnership, and of the president, secretary and statutory agent if a corporation; the full name and address of the qualifying party who will be responsible for the business license, the classification or classifications for which the license is applied, and proof of financial responsibility pursuant to A.R.S. § 32-2312 et seq.~~
 - ~~2. For an original qualifying party or pest control advisor license: The full name, home address, date of birth and social security of the applicant; whether or not a license or permit to practice pest control has ever been refused, revoked or~~~~

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suspended; whether or not the applicant has ever been convicted of a felony, the nature of the felony, the jurisdiction where the offense occurred and final disposition of the conviction.

3. For certification: The full name, home address, and date of birth of the applicant, the categories for which certification is applied, the name of the applicant's present employer, whether or not the applicant has ever been convicted of a felony, the nature of the felony, the jurisdiction where the offense occurred, and final disposition of the conviction.
4. For renewal of a business, qualifying party, or advisor license: Notice of any change of address, name of qualifying party if a business license applicant, verification of continuing education if a qualifying party or advisor.
5. For an original registration: Full name and home address of the registering employee, name of business registering the employee, whether or not the employee has ever been convicted of a felony, the nature of the felony, the jurisdiction where the offense occurred, and final disposition of the conviction.

R4-29-202. Renewals of Licenses, Qualifications, Certifications and Registrations Repealed

- A.** The Commission shall mail renewal forms to a licensee or qualifying party at the place of business and to a certified applicator or inactive qualifying party at the location listed on the application or on the most recent address change form. Renewals shall not be considered complete until all prescribed requirements are met. Renewal fees paid by check shall not be considered paid until cleared for payment by the bank.
- B.** Licensees shall be responsible for timely renewal of their license and employee and office registrations. Qualifying parties shall be responsible for timely renewal of their qualification. Applicators shall be responsible for the timely renewal of their certification. Incomplete and inaccurately completed forms shall be rejected. Neither the need for additional time to accurately complete renewal forms nor failure to receive renewal forms shall be a justifiable excuse for late renewal of a license, qualification, certification, or registration without a late fee or other penalty.
- C.** Between the expiration date of a license, qualification, certification, or registration and the date of renewal, all rights under that license, qualification, certification, or registration shall terminate. Until renewed, the licensee, qualifying party, applicator, or registered employee shall not act in a manner included in the definition of a business licensee, qualifying party, pest control advisor, structural commercial applicator, or registered employee.
- D.** A late payment fee of double the prescribed renewal fee shall be assessed for a license, qualification, certification or registration renewal which is not renewed pursuant to A.R.S. § 32-2312(D), 32-2313(H), or 32-2318(E), or is postmarked later than the date of expiration of such credential.
- E.** In addition to all other renewal requirements, the Commission shall require a qualifying party, pest control advisor or applicator who applies to renew later than 60 days past the expiration date of his license, qualification, or certificate, first to pass examinations currently applicable to an applicant for qualifying party, advisor or applicator in the classifications or categories of the renewed credential.

R4-29-203. Structural Commercial Applicator Certification Repealed

- A.** Except as permitted by A.R.S. § 32-2315, a person shall act as a structural commercial applicator only after completing all certification requirements and receiving a valid commercial applicator certificate issued by the Commission.
- B.** The Commission may notify the employer of a registered employee failing to satisfy certification requirements.
- C.** For purposes of this Chapter, certifications for commercial applicators, structural commercial applicators, or applicators shall be considered synonymous with commercial certifications for applicators of restricted-use pesticides as prescribed by the U.S. Environmental Protection Agency.
- D.** In order to qualify for certification, an applicant shall demonstrate knowledge of the principles and practices of pest control and safe use of pesticides. An applicator shall attain a minimum score of 70 percent on each section of the general standards examination and a minimum of 70 percent on each section in each specific category or subcategory in which the applicator seeks certification. All examinations shall be administered in writing and in English. A certification card shall be issued after an applicant passes all sections of the general standards examination and all sections of at least one category or subcategory examination.
 1. The general standards examination shall test the knowledge and understanding of:
 - a. Pesticide label and labeling and pesticide types and formulations.
 - b. Safety factors relating to the use and handling of pesticides.
 - c. Environmental factors including the potential consequences of use and misuse of a pesticide.
 - d. Equipment types and their use and maintenance.
 - e. Application techniques, including calibration and dilution calculations.
 - f. Laws and regulations relating to the application and use of pesticides.
 - g. Identification of pests.
 2. The categories and subcategories offered for structural commercial applicator certification shall be:
 - a. Turf and ornamental pest control, including the use of plant growth regulators, necessary for the maintenance and production of ornamental and horticultural plants and turf.
 - b. Aquatic pest control including the application of pesticides to standing or running water, but excluding applicators who must be certified in the category of public health pest control.

- e. Industrial, institutional, structural, and health-related pest control, including the use of pesticides in or around structures and adjacent areas, both public and private, and for the protection of stored, processed or manufactured products. Certification in this category shall be attained by satisfying the requirements of one or more subcategories:
 - i. General pest control in and about structures, including control of vertebrate pests, but excluding wood-destroying pests and organisms and control of plants or plant pests and use of plant growth regulators.—
 - ii. Control of termites and other wood-destroying pests and organisms.—
 - iii. Wood products preservation, including the use of pesticides to directly treat wood and wood products, to control or prevent wood degradation by wood-destroying organisms.—
 - iv. Control of pests using fumigation as a method of structural pest control.—
 - v. Weed control.—
- 3. Four or more examination sections shall be required for each category. The category examination shall test the knowledge and understanding of the following applicable category-specific information:
 - a. General information concerning pests in the category.—
 - b. Pest identification.—
 - c. Pesticide usage and application techniques including calibration and dilution calculations.—
 - d. Safety and environmental considerations.—
 - e. Laws and regulations.—
- E. Applications for certification shall be submitted to the Commission at least five working days before a scheduled examination in order to be processed for that examination.—
- F. Certifications shall expire on May 30 of each year. Application for renewal of certification shall be submitted to the Commission on or before May 1 of each year and shall be accompanied by a fee as set forth in R4-29-211.—
- G. Applicants may retake failed examination sections without charge as soon as the next scheduled examination if at least one week has passed from the date of taking the failed exam.—
- H. An applicant shall pass all sections of the general standards examination and all sections of at least one category or subcategory examination within six months of the date of their application. The file of an applicant who does not satisfy these requirements shall be considered incomplete and shall be closed. No refunds shall be made for closed files. An applicant whose file has been closed shall reapply as a new applicant.—
- I. An applicator who chooses to broaden the scope of their certification may do so by passing with a score of 70 percent or better all examination sections for the intended category. The fee to broaden the scope of a certification is set forth in R4-29-211. An applicator shall submit to the Commission a notice of intent to test at least five days prior to testing.—

R4-29-204. Qualifying Party Qualification and Pest Control Advisor License Repealed

- A. Except as permitted by A.R.S. § 32-2314(G), each qualifying party shall be qualified in the classification for which they intend to do business before they can qualify a business of structural pest control. Each pest control advisor shall be licensed in the classification for which they intend to do business before they can engage in a business of structural pest control advisor.—
- B. Each qualifying party and pest control advisor applicant shall hold a valid applicator's certification for each category in which a qualification or pest control advisor license is sought before admission to the qualification or advisor examination.—
- C. Each applicant for the qualifying party qualification shall demonstrate to the Commission, before admission to the qualification examination, evidence of practical experience in the specific classification for which they apply. Practical experience may be demonstrated by actual compensated field work and shall not include sales work. Noncompensated volunteer or research-related field work may be evaluated by the Commission. An applicant who intends to use coursework pursuant to A.R.S. § 32-2314(C)(2)(b) for part of the practical experience requirement shall submit a certified transcript of such work.—
- D. No application for qualifying party qualification or pest control advisor license shall be considered complete and no qualification or license shall be issued until the applicant passes, with a score of 70 percent or better, each section of the core examination and all sections of each category-specific examination required for a classification.—
 - 1. The core examination shall test the applicant's knowledge of:
 - a. Arizona and federal laws, rules and regulations governing the business of structural pest control and use and application of pesticides; and
 - b. Safety factors including practical first aid as it applies to the use, application and storage of pesticides.—
 - 2. Category examinations shall test, as applicable, the applicant's category-specific knowledge of:
 - a. Identification of pests and recognition of their damage,—
 - b. General knowledge of life cycles and habits as they apply to the control of pests,—
 - c. Practical methods of application and control including calibration and dilution calculation,—
 - d. Pesticides,—
 - e. Laws and regulations.—

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3. The Commission may offer examinations for qualification or licensure in the following categories:
 - a. General pest control;
 - b. Vertebrate pest control;
 - c. Wood-destroying pest control;
 - d. Wood products preservation and pest control;
 - e. Ornamental horticultural pest control;
 - f. Golf course pest management;
 - g. Weed control;
 - h. Aquatic vertebrate pest control;
 - i. Aquatic invertebrate pest control;
 - j. Aquatic weed control;
 - k. Use of fumigants for pest control.

- ~~E.~~ An applicant who fails one or more sections of a core or category examination may apply to retake the failed sections. An applicant shall request in writing to retake the failed examination sections and submit a fee as prescribed in R4-29-211 for each examination section requested at least five working days prior to a scheduled examination. An applicant may retake the same failed section only twice. If the applicant does not pass on the third attempt, the applicant's file shall be closed. Applicants whose files have been closed shall reapply as new applicants. An applicant who reapplies within one year of previous Commission approval shall not be required again to receive Commission approval for the same previously approved categories. An applicant shall not reapply sooner than 90 days from the date of file closure.
- ~~F.~~ An applicant shall pass all sections of the core examination and all sections of each category-specific examination required for a classification within six months of the date of notification of Commission approval for examination. The file of an applicant who does not satisfy these requirements shall be considered incomplete and shall be closed. No refunds shall be made for closed files. —
- ~~G.~~ The file of an applicant whose examination is rejected because of cheating shall be closed and no refund shall be made.
- ~~H.~~ A person who holds a qualifying party qualification or pest control advisor license may broaden the scope of that qualification or license by submitting the requested information on a new application form, prescribed in R4-29-201(G), provided by the Commission and fees as prescribed by R4-29-211, receiving approval from the Commission to test, and passing all sections of the category examination. An applicant for qualifying party qualification shall also furnish satisfactory proof of category-specific practical experience.
- ~~I.~~ Licenses and qualifications shall be valid for one year, or portion thereof, and expire on December 31 of each year. Application for renewal shall be submitted to the Commission on or before December 1 of each year and shall be accompanied by a fee as set forth in R4-29-211.

R4-29-205. Inactive Qualifying Party Status Repealed

- ~~A.~~ A person who has qualified under A.R.S. § 32-2314 and is currently qualified and not then acting as the qualifying party for a business licensee may apply to the Commission for inactive qualifying party status. An inactive qualifying party shall not act as a qualifying party in the business of structural pest control without first reactivating his qualification.
- ~~B.~~ A fee shall not be charged for change of status from active to inactive qualifying party provided that the prescribed renewal fees have been paid for the current year. No refund shall be made for current fees already paid. A qualifying party who is registered as an inactive qualifying party and desires to remain inactive shall be charged the qualifying party inactive fee at renewal. —
- ~~C.~~ An inactive qualifying party shall complete an application on a form provided by the Commission, which shall require at least the full name, home address and mailing address of the applicant, the name of the company for which the applicant is qualifying, the classification for which the license is applied and whether the applicant is certified in the same categories as the license, and submit such application for review and receive Commission approval before reactivating an inactive qualifying party qualification. The full fee for an active qualifying party qualification renewal shall be assessed at the time of application for reactivation of the qualifying party qualification. —
- ~~D.~~ An inactive qualifying party shall present evidence of current certification and continuing education credits prior to reactivation. A qualifying party who cannot present evidence of current certification and continuing education credits before reactivation shall pass, with a score of 70 percent or better, all sections of all applicable examinations currently in use.

R4-29-206. Business License, General Provisions Repealed

- ~~A.~~ Commission approval shall be required for a pest control business license. At least ten days prior to the Commission meeting at which the application will be voted upon, a business license applicant shall submit to the Commission, upon forms provided by the Commission and prescribed in R4-29-201(G), the completed application for the business of structural pest control or the business of pest control advisor, application for the designated qualifying party or pest control advisor, certificate of insurance, and proposed company name. —
- ~~B.~~ Insurance coverage in the name of the business as registered with the Commission shall be in effect at all times during the licensing period. During an interruption in insurance coverage, a company shall terminate all pest control-related activi-

ties. A certificate of insurance submitted to the Commission shall include a statement that the insurance company shall notify the Commission in writing at least 30 days prior to cancellation of the insurance and that the policy conforms to the standards set forth in A.R.S. § 32-2313(D) and (E).

- ~~C. The business license and office and employee registrations shall be renewed annually. Each shall be valid for one year, or portion thereof, and shall expire on December 31 of each year. Application for renewal shall be submitted to the Commission on or before December 1 of each year and shall be accompanied by a fee as set forth in R4-29-211.~~

R4-29-207. Display and Use of License Name and Number Repealed

- ~~A. Business and branch office licenses issued by the Commission shall be prominently displayed in the place of business. All written proposals and written contracts used by the company shall be printed with the company's name and business license number as registered by the Commission. All treatment receipts and inspection reports shall include the registered business license name and number.~~
- ~~B. A licensee shall do business under the name in which the license was issued. In addition to the actual name of the licensed business, a company may use slogans, marks and other names in its business. However, the actual name as registered with the Commission shall be prominently displayed on all written material used in the business and on all advertising, whether written or oral.~~
- ~~C. Either the motor vehicle or trailer, when used in conjunction with one another, and on behalf of or by a licensee or licensee's employees in the conduct of pest control, shall be marked on both sides for easy identification, with the company name and business license number as registered with the Commission. The company name and business license number shall be in bold lettering at least two inches high, in distinctly contrasting color with the background, and shall be in plain view of the public. The vehicle or trailer shall be properly marked as described within 30 days after the issuance of the original business license, a change of business license, or acquisition of vehicle or trailer. Vehicles which are not regularly used for pest control services shall be exempt from this rule. Vehicles which are used for sales or solicitations shall be exempt from this rule.~~

R4-29-208. Qualifying Party or Pest Control Advisor Required for Each Business Repealed

- ~~A. A person shall not engage in the business of structural pest control unless that business has a designated qualifying party with a valid and active qualification for all classifications in which that business operates, or that business has designated to the Commission a temporary qualifying party. A person shall not engage in the business of pest control advisor unless that business has a designated pest control advisor with a valid pest control advisor license for all classifications in which that business operates.~~
- ~~B. The qualifying party or pest control advisor shall supervise the pest control related business of the company and shall be available to supervise and assist the company's registered employees.~~
- ~~C. A qualifying party or pest control advisor shall qualify only one business license at one time.~~

R4-29-209. Branch Office Repealed

- ~~A. A business licensee shall register each branch office with the Commission by completing a form provided by the Commission and submitting a fee for each branch as prescribed in R4-29-211 before the branch office opens for business. The branch office registration form shall require at least the complete address of the primary office, the business license number, the full name of the qualifying party, the business license and qualifying party license numbers and the complete physical address of the registering branch office.~~
- ~~B. Each branch office shall be registered only in the name style as that shown on the license of the registered business, or shall obtain a separate business license and operate as a separate company. A company which wishes to conduct additional business in a name style different from that which is shown on the business license shall obtain a separate business license for each such company.~~
- ~~C. All oral and written representations relating to any branch office shall prominently bear the registered business name. Representations shall include, but not be limited to, service vehicle markings, statements, receipts, inspection reports, bids, contracts, and written or oral advertisement.~~

R4-29-211. Schedule of Fees, Payments and Exemption Repealed

- ~~A. For the purpose of licensure, qualification, certification and registration the following schedule of fees shall apply:
 - Qualifying party initial application and examination: \$150.00
 - Qualifying party or pest control advisor examination retake, each section: \$30.00
 - Qualifying party or pest control advisor broaden scope, each category: \$50.00
 - Qualifying party renewal fee: \$125.00
 - Qualifying party change of status, active to inactive: None
 - Qualifying party change of status, inactive to active: \$125.00
 - Qualifying party inactive renewal: \$25.00
 - Temporary qualifying party qualification: \$25.00
 - Pest control advisor initial application, examination, and pest control advisor license: \$150.00~~

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~~Pest control advisor license renewal: \$125.00
Business license, initial: \$75.00
Business license, renewal: \$75.00
Branch office registration, initial: \$35.00
Branch office registration, renewal: \$35.00
Certification application and examination: \$30.00
Certification, renewal: \$20.00
Certification, broaden scope of: \$10.00
Employee registration, initial: \$5.00
Employee registration, renewal: \$3.00
Duplicate wall license: \$20.00
Duplicate qualifying party or pest control advisor identification card: \$10.00
Duplicate certification card: \$10.00
Duplicate registration card: \$3.00
Late filing fee, termite action registration form, double the prescribed registration fee.~~

- ~~B. Payment for all fees shall be made to the order of the Structural Pest Control Commission and may be made by money order, cashier's check, certified check, business check or personal check. Fees paid by business or personal checks shall not be considered paid until cleared for payment by banks. Fees shall not be prorated.~~
- ~~C. Arizona state pesticide inspectors who only commercially apply pesticides as required by the state agency for whom they are employed shall not be required to pay the qualification, advisor or certification fee. Annual renewal fees shall be waived during the time they serve as state inspectors.~~

R4-29-212. Continuing Education Required for Qualifying Parties, Pest Control Advisors and Applicators Repealed

- ~~A. Each qualifying party, pest control advisor or applicator shall submit proof of 12 continuing education credits earned during the preceding two years at the time of their annual renewal. Credits may be reported each year. Credits used to satisfy the requirements of the applicator certification may be used to satisfy the requirements for a qualifying party or pest control advisor. Persons who do not meet the continuing education requirements shall complete current testing requirements prior to renewal of their credential.~~
- ~~B. Coursework, classes and other forms of instruction shall be reviewed by the advisory accreditation committee and approved by the Commission before qualifying for continuing education credit. To receive approval, instruction shall be substantially related to the license or certificate classification, category or subcategory for which credit is applied.~~
- ~~C. A qualifying party, pest control advisor or applicator may earn up to one hour of continuing education credit each year for attending regularly scheduled meetings of the Commission.~~
- ~~D. A qualifying party or pest control advisor may earn up to one hour of credit each year in a business management course which has been approved by the Commission.~~
- ~~E. Documentation evidencing completed continuing education instruction shall be submitted to the Commission with the application for credential renewal. The qualifying party, pest control advisor, or certified applicator shall be responsible for maintaining their own records for continuing education credits.~~
- ~~F. An attendee may request credit for instruction which he has taken and which was not previously approved for accreditation. Each request shall be submitted to the advisory accreditation committee and shall include the information as required in R4-29-213(A)(1) and (2).~~

R4-29-213. Requirements for Providers of Continuing Education Programs Repealed

- ~~A. Providers of continuing education programs shall apply for accreditation on a form provided by the Commission, which shall contain at least the name and address of the provider, the number of continuing education hours requested, the type of instruction to be provided, and the method for evaluating attendees. Each provider shall:
 - ~~1. Include the topic of the program in abstract or outline form. Except for a business management program, each program shall be directly related to pest control, management, or pesticide usage, and to the classification, category or subcategory in which credit is sought.~~
 - ~~2. Provide the name and qualifications of the person directly presenting the instruction.~~
 - ~~3. Provide an attendance list.~~
 - ~~4. Issue a certificate of completion to each attendee who successfully completes the program.~~~~
- ~~B. The program provider shall notify the Commission of course content or instructor changes for a previously approved continuing education program.~~
- ~~C. The Commission may accept, modify or reject the recommendation of the advisory accreditation committee. The Commission shall notify the applicant of its decision in writing.~~
- ~~D. Unless otherwise indicated on the written notice of approval, each in-house training program shall be accredited for two years and all other courses shall be accredited for one year. The program provider shall request renewal in writing prior to~~

the expiration of an accreditation period.

- E. The Commission may evaluate an approved program of instruction to determine its level of effectiveness. The Commission may withdraw approval of a course which fails to meet the requirements outlined in subsection (A) of this rule.

ARTICLE 3. PESTICIDE USAGE REPEALED

R4-29-301. Misuse of Any Pesticide; Falsification of Any Pesticide Record Repealed

- A. No person shall misuse any pesticide. No person shall use, supervise, or direct the use, including application, storage and disposal of any pesticide in a manner inconsistent with its product label or labeling as registered by the United States Environmental Protection Agency and the Arizona Department of Agriculture unless otherwise prescribed by Commission rule or written order. No person shall apply, cause to apply or cause the direct release of a pesticide spray, dust or granule in such a manner that the pesticide comes into contact with persons (other than those involved in the application and who are wearing proper protective equipment), animals, or property other than the site and target being treated, unless such release is caused by accident beyond the control of the operator. No person shall use any pesticide in a manner prohibited by A.R.S. Title 32, Chapter 22, and rules adopted pursuant to this Chapter, or a written order of the Commission.
- B. No person shall falsify a record used or maintained in connection with the use, including application, storage and disposal, of pesticides.

R4-29-302. Certified Applicator Required Repealed

- A. Except as permitted by A.R.S. § 32-2315, each company shall apply or cause to have applied pesticides only by an applicator who has a valid applicator certification or by a qualifying party licensed in the classification of the pesticide being used.
- B. Restricted use pesticides shall be applied, stored or disposed of only by a person who holds a valid certification in the category or subcategory applicable to the restricted use pesticide being used, or under the direct supervision of an applicator holding a valid certification in the category or subcategory applicable to the restricted use pesticide being used.

R4-29-303. Direct Supervision of Noncertified Persons Required Repealed

- A. Persons who apply pesticides and who are not certified shall work under the direct supervision of a registered and certified applicator or qualifying party who shall be responsible for their pest control activities. The establishment of direct supervision shall not provide relief from the requirement of certification as set forth in A.R.S. § 32-2315(A). An applicator providing supervision for restricted use pesticides shall be certified in the category or subcategory for which supervision is provided.
- B. The availability of the certified applicator or qualifying party shall be directly related to the hazard of the situation. In situations where the certified applicator is not required to be physically present, direct supervision shall include verifiable instructions to the noncertified person as follows:
 1. Detailed guidance for proper loading, mixing, applying, storing, and disposing of the pesticide;
 2. Detailed guidance for the use of all required safety equipment; and
 3. Provisions for contacting the certified applicator by means of telephone, radio or other immediate communication method in the event that he is needed.
- C. When directed by label or other provision of this Chapter, the actual physical presence of a certified applicator shall be required when application is made by a noncertified person.

R4-29-304. Protect Against Contamination Repealed

- A. Each company shall protect food, feed and drug commodities and equipment used in the preparation of food, feed and drugs against pesticide contamination. Only pesticides labeled for use in food areas shall be applied to the food areas of food handling establishments. For applications other than at a food handling establishment and prior to treatment, exposed food, feed, drugs, and equipment including utensils, household dishes, table service and the like shall be effectively protected against pesticide contamination. Additional safety precautions or directions as required on the pesticide label or labeling shall be accomplished prior to treatment.
- B. Each person while mixing pesticides with water shall protect the water supply from back siphonage of pesticide mixture. Spray tanks in which pesticides are mixed or from which pesticides are dispensed and to which water is added shall not be filled through direct fill pipe or hose connections protruding into the spray tank. Fill pipes or hoses shall terminate at least two inches above spray tank intake and fill opening or be equipped with an effective anti-siphonage device. When there is a conflict between this rule and local ordinance or labeling directions, the more specific language shall apply.
- C. No person shall operate equipment for the mixing or application of pesticides, including such auxiliary equipment as hoses and metering devices, in such condition or in such a manner as to create a hazard or nontarget contamination.
- D. Except as specifically provided by label instructions, no person shall apply a pesticide which is formulated as granules and which bears the statement "Keep out of reach of children" in a manner which leaves exposed granules on patios, steps, sidewalks, walkways or floors.

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- ~~E. Cleanup of chemical spillage shall be made in accordance with product labeling and manufacturer's recommendations and in a manner which minimizes exposure to humans and other nontarget organisms. Recommendations of health and medical personnel and local authorities shall be followed for cleanup in which human endangerment is possible.~~
- ~~F. The business licensee or their representative shall notify the Commission within one business day of becoming aware of any of the following incidents allegedly caused by the use of pesticides:~~
 - ~~1. Medically confirmed illness or death of humans, pets, or nontarget wildlife.~~
 - ~~2. Confirmed contamination of food, feed, drugs or water supply.~~
 - ~~3. Health-threatening contamination of a structure which has resulted in the hospitalization of an occupant or a requirement by medical personnel or local authorities for evacuation of the structure, or contamination of the environment which has resulted in a requirement by local authorities for evacuation of an area.~~

R4-29-305. Written Notification of Treatment Required Repealed

- ~~A. Business licensees or their representatives shall provide written notification immediately following an application of pesticide. Such notice shall include the chemical by trade name and any other information as required by the pesticide label or local ordinance and shall be made to the person requesting the treatment or to his designated agent.~~
- ~~B. A statement of precaution shall accompany each notification of treatment. Each statement of precaution shall be printed conspicuously, in not less than eight point font, and shall include the words:
"Warning—Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated or aerated."
For more information contact [business license name and business license number] at [telephone number]."~~

R4-29-306. Notice of Intent to Apply Pesticides Repealed

- ~~A. For the purpose of monitoring pesticide applications, the Commission, its executive director, their designee, or a Commission inspector may make written request for advanced notification of scheduled pesticide treatments. The Commission, its executive director, their designee, or a Commission inspector shall identify the date of the requested schedule of treatments and shall allow at least 24 hours for compliance with its request.~~
- ~~B. The business licensee, commercial applicator or their agent shall provide for review, at the office of the business licensee or applicator or at another mutually agreeable location, a listing of treatments and the locations of such treatments scheduled to be accomplished by at least one applicator within the next 24 hours.~~
- ~~C. If a person cannot timely comply with a request for a schedule of treatments, the person shall set forth the reasons for non-compliance in writing and immediately notify the Commission, its executive director, their designee, or a Commission inspector. Upon a showing of good cause, the request may be modified or excused.~~

R4-29-307. Make and Preserve Treatment Records Repealed

- ~~A. Each company shall make and preserve true and accurate records of treatments performed, including those performed under warranty or guarantee, for a period of not less than three years from the date of a treatment.~~
- ~~B. Treatment records shall include:~~
 - ~~1. Name and address of the customer and site of application.~~
 - ~~2. Date of service.~~
 - ~~3. Target pest or purpose of service.~~
 - ~~4. Trade name or common name of the materials used.~~
 - ~~5. Percent active ingredient in the finished product.~~
 - ~~6. Amount of finished product used.~~
 - ~~7. Name and certification number of the applicator.~~
 - ~~8. Contract, if applicable.~~
- ~~C. In the event of an emergency endangering the health or safety of a person, treatment records shall be provided immediately to the Commission, its executive director, their designee, or a Commission inspector, upon their request. In other situations, treatment records shall be made available for inspection and copying by the Commission, its executive director, their designee, or a Commission inspector, with the consent of the qualifying party or applicator or as provided for in R4-29-309.~~

R4-29-308. Restricted use Records Required Repealed

- ~~A. All applications and disposals of restricted-use pesticides by or under the direct supervision of applicators who are certified by the Commission shall be recorded and retained for a period of at least three years whether or not that application or disposal is made while a person is engaged in the business of structural pest control. If these records are maintained by a business licensee, separate records shall not be required from the applicator. Application and disposal records shall be made available for inspection and copying by a representative of the Commission.~~
- ~~B. Restricted use pesticide application records shall include all information required by R4-29-307 and:~~
 - ~~1. If different than the customer, the name and address of the person for whom pesticide was applied.~~
 - ~~2. Specific site treated.~~

3. Environmental Protection Agency registration number of material used.

- ~~C. If unused portions of restricted use pesticides are disposed, records of such disposal shall include the trade or common name and Environmental Protection Agency registration number of the pesticide, percent active ingredient of the pesticide in the material disposed, amount of material disposed, method of disposal, date of disposal, and location and type of disposal site or disposal service, and the name and certification number of the applicator in charge of the disposal.~~

R4-29-309. Records Required Within 24 Hours Repealed

- ~~A. The Commission, its executive director, their designee, or a Commission inspector may request in writing and within 24 hours of notification, specific records from a business licensee, pest control advisor, qualifying party or applicator at his place of business during normal business hours. The qualifying party, pest control advisor or applicator in charge of an office shall comply with the request and provide such records by the same time of the next business day. The qualifying party, advisor, applicator or qualified designee shall be available to interpret requested records. Business licensees or their representatives may deliver the requested records to the Commission in person, by mail or by facsimile.~~

- ~~B. "Records" means all records directly related to the business of structural pest control and shall include records of:~~

- ~~1. Pesticide inventory including quantities of pesticides purchased or otherwise acquired, sold, disposed of, and lost; and quantities of pesticides as classified by general or restricted use, canceled or suspended products, and noncommercial use.~~
- ~~2. Pesticide application.~~
- ~~3. Written inspection reports.~~
- ~~4. Proposals for treatment or alteration.~~
- ~~5. Contractual agreements for treatments or inspections.~~
- ~~6. Personnel actions for employees whose duties include the application of pesticides, including dates of hire, registrations, certifications, training and continuing education, and disassociations.~~
- ~~7. Dates of acquisition of vehicles which are used in the conduct of pest control service.~~
- ~~8. Insurance as required by A.R.S. § 32-2313.~~

- ~~C. If a person cannot timely comply with a records request, they shall set forth their reasons for noncompliance in writing and immediately notify the Commission, its executive director, their designee, or a Commission inspector. Upon a showing of good cause, the time to provide such records may be extended or the request for records may be excused.~~

R4-29-310. General Provisions for Pesticide Usage Repealed

- ~~A. Only those pesticides registered by both the U. S. Environmental Protection Agency and the Arizona Department of Agriculture shall be used.~~

- ~~B. An applicator may use application rates as provided by Special Local Need registration and labeling only if such labeling is in the possession of the user at the time of the application.~~

- ~~C. Licensees and certified applicators shall maintain at the registered business locations specimen copies of labels and material safety data sheets for currently registered pesticides used in their pest control operations. These shall be made available for inspection at the request of the Commission.~~

- ~~D. Business licensees shall assure that their employees have the protective equipment specified by the pesticide label of the product used. The licensee shall instruct employees to use protective clothing and equipment while engaged in the application of pesticides and how to maintain, clean and store such when not in use.~~

R4-29-311. Provisions for Pesticide Storage Repeal

- ~~A. All pesticides utilized by a business licensee or applicator shall be stored according to labeling instructions.~~

- ~~B. All pesticides shall be stored in closed containers free from corrosion, leakage and pesticide contamination. Lost or damaged labels shall be replaced with approved specimen labels and fastened to the container. Damaged containers, other than fumigants, shall be replaced with identically labeled containers or, if not available, properly labeled service containers for temporary storage or transport.~~

- ~~C. A service container shall be considered to be any container used to hold, store or transport a pesticide concentrate or use-dilution preparation other than the original labeled container, measuring device or application device. Service containers shall be closed when not in use, clean and nonleaking. When service containers are used to temporarily store or transport a pesticide concentrate or registered ready to use product, each service container shall bear a durable and legible label or tag which shall include the following information:~~

- ~~1. The name, address and telephone number of the commercial or noncommercial location using the product.~~
- ~~2. The common chemical or trade name of the principal active ingredients.~~
- ~~3. The U. S. Environmental Protection Agency registration number.~~
- ~~4. The strength of the concentrate or dilution expressed as a percentage of active ingredients.~~
- ~~5. The signal word for the registered label.~~
- ~~6. The phrase "KEEP OUT OF REACH OF CHILDREN".~~
- ~~7. Any other information required by Environmental Protection Agency regulations.~~

~~A service container shall not bear other legible wording or markings which are not related to the pesticide product con-~~

tained therein.

- ~~D.~~ Application equipment from which pesticide preparations are directly discharged and in which pesticides are not stored shall not be subject to labeling requirements.
- ~~E.~~ No pesticide shall be stored in the same room where food, feed, drugs, eating utensils, beverages, or tobacco products are stored. No pesticide shall be stored in containers which have been used for food, feed, beverages, drugs or cosmetics or which are in a significant way, as by shape, size or markings, identified with food, feed beverages, drugs, or cosmetics. No fumigant shall be stored within a human dwelling.

R4-29-312. Pesticide Containers; Storage and Disposal Repealed

- ~~A.~~ The storage and disposal of pesticide containers shall be in strict accordance with label directions or, in the absence thereof, in a manner recommended by the chemical manufacturer or by local ordinances. When a conflict exists between label and other regulation, the more restrictive language shall apply.
- ~~B.~~ An empty pesticide container which has not been prepared for disposal in accordance with label directions and this rule or a returnable or reusable pesticide container held for shipment shall be stored until disposed or recycled as though it contained pesticide.

R4-29-313. Pesticide Storage Facility Repealed

- ~~A.~~ Each company shall provide a facility for safe storage of pesticides and devices, and the use of such facility shall not violate laws, ordinances or regulations relating to pesticide storage of the political subdivision where it is located. A designated pesticide storage place on a service vehicle may be included within the meaning of pesticide storage facility.
- ~~B.~~ The facility shall be secure from unauthorized entry and equipped with an entrance or access which shall be locked when unattended. A sign shall be conspicuously posted in the entrance or access area which warns individuals that pesticides are stored inside.
- ~~C.~~ The facility shall provide ventilation to the outside so as to prevent build-up of chemical odors and to preclude chemical injury to persons, domestic animals or wildlife.
- ~~D.~~ In or about the pesticide storage facility, including a location where all pesticides are stored on a service vehicle, the business licensee shall provide:
 - ~~1.~~ Adequate lighting to read pesticide labels.
 - ~~2.~~ Operational fire extinguisher which is appropriate for the pesticides stored.
 - ~~3.~~ First-aid kit.
 - ~~4.~~ Emergency medical information including telephone numbers for poison control centers.
 - ~~5.~~ Absorbent materials capable of absorbing spills of at least one gallon and leaks.
 - ~~6.~~ A specimen label and material safety data sheet for each pesticide stored therein.
 - ~~7.~~ Washing facilities which shall include soap, fresh water, and toweling.

R4-29-314. Pesticide Storage on Service Vehicles Repealed

- ~~A.~~ A locking storage space designed to prevent pesticide containers from becoming damaged while in transit shall be used whenever a pesticide is stored on a service vehicle.
- ~~B.~~ No pesticide product, including a pesticide in portable application equipment such as a spray tank in a truck bed, shall be left in an unattended and accessible manner.
- ~~C.~~ All pesticide products in original containers or service containers and all empty pesticide containers not yet prepared for disposal in accordance with label directions shall be kept locked when in unattended service vehicles or shall be kept within view and under the direct and personal supervision of the employee responsible for that service vehicle. Cases of unopened pesticide products which are sealed in the manufacturer's or distributor's outer coverings and which are transported but are not stored upon a service vehicle are exempt from the requirements of this subsection.

R4-29-315. Required on Service Vehicles Repealed

The business licensee shall assure that each service vehicle used in the conduct of pest control applications is provided with:

- ~~1.~~ Measuring and pouring devices compatible with the pesticides carried thereon.
- ~~2.~~ Protective clothing and equipment suitable for the pesticides stored, transported or used on that service vehicle.
- ~~3.~~ Absorbent materials capable of absorbing or containing spills of at least one gallon and leaks and equipment to collect and store contaminated absorbent materials.
- ~~4.~~ A basic first-aid kit which shall contain information regarding the practical treatment for pesticide poisonings and emergency medical information including telephone numbers for poison control centers.
- ~~5.~~ A specimen label and material safety data sheet for each pesticide transported or stored on the vehicle.
- ~~6.~~ A change of clothing for use in the event that the applicator's garments are contaminated while using a pesticide.
- ~~7.~~ Potable water for emergency washing of hands, face or body.

ARTICLE 4. TERMITES AND OTHER WOOD-DESTROYING ORGANISMS REPEALED

R4-29-401. Definitions Repealed

For the purpose of this Article:

1. "Bulletin 64" means the United States Department of Agriculture Forest Service, Home and Garden Bulletin 64 as revised February 1989 and incorporated herein by reference and on file with the Office of the Secretary of State.
2. "Calibration or calibrated" means a method of determining the amount of pesticide that will be applied.
3. "Drywood termites" means the several species of termites which can attack dry, sound wood and do not require contact with the soil. These may include representatives of the families Kalotermitidae and Hodotermitidae.
4. "Pretreatment and preconstruction treatment" are considered synonymous and are used interchangeably.
5. "Project" means an individual address or a privately owned or individually owned dwelling.
6. "Post-treatment and post-construction treatment" are considered synonymous and are used interchangeably.
7. "Subterranean termites" means the several species of termites which usually maintain contact with the soil. These may include representatives of the families Rhino termitidae and Termitidae.
8. "Termiticide" means a chemical registered and used for the control of termites.

R4-29-402. Chemicals Repealed

Chemicals used for either preconstruction treatments or post-construction treatments shall be currently registered for such use by both the Environmental Protection Agency and the Arizona Department of Agriculture. Applications of termiticide shall be made only in the specific quantities, strengths and dosages as recommended on the product label unless otherwise prescribed by Commission rule or order.

R4-29-407. Preconstruction Treatments; Establishment of Barriers; Soil Disturbed; Concrete Poured Prior to Treatment; Effective Date Repealed

- A.** Horizontal barriers shall be established prior to pouring of all slab construction under roof, slab supported or constructed porches, patios, garages, carports, and entrance and utility platforms.
- B.** Vertical barriers shall be established in critical areas visible at the time of treatment. For the purpose of pretreatment, critical areas shall include critical areas identified by the label and soil in the immediate vicinity of:
 1. Penetrations or protrusions through the slab.
 2. Observable presets for controlled cracks or joints.
 3. Formed up changes of grade.
 4. Abutting slabs.
 5. Bathtraps and tear-outs.
 6. Interior of foundation or stem walls.
 7. Piers, pillars, pipes or other objects that extend from the soil to the structure.
- C.** Unless specifically precluded by label, critical areas shall be treated at a rate of four gallons of chemical preparation per ten linear feet for each foot of depth from the top of the grade to the footer. In the absence of an adjacent footer, depth shall be considered to be one foot.
- D.** Vertical barriers at the exterior of foundation walls in stem-wall construction or exterior of grade beam in monolithic construction shall be established after grading and other construction related soil disturbance has been completed. This treatment shall be a required preventative treatment which may be completed post-construction. A record of this treatment shall be conspicuously posted or left with the property agent. The business licensee shall be responsible for the establishment of this barrier.
- E.** If a licensee or their agent is advised that soil or fill which has been treated is disturbed and the continuous chemical barrier is broken before the concrete is poured, the soil shall be retreated to establish a continuous horizontal and vertical chemical barrier. Retreatment shall include all areas of soil disturbance.
- F.** A business licensee shall not issue a termite soil treatment guarantee for a site where a cement slab was poured and the soil thereunder was not pretreated until a complete post-construction treatment in accordance with R4-29-410 is rendered.
- G.** The effective date of treatment as recorded on a termite soil treatment guarantee issued for residential slab on grade construction of one or two units shall be the date of the application of termiticide to the soil beneath the primary slab. In the case of multi-slab construction in which no primary slab is identified, the effective date of treatment is the date of the last application of termiticide prior to pouring the final slab at the project.

R4-29-408. Pretreatment Tagging and Records Required Repealed

- A.** A tag shall be prominently placed and securely affixed at the site of each pretreatment project immediately after completion of the termiticide application. In the event that a pretreatment site must be abandoned before a treatment is complete, a tag representing work accomplished and including all information required in subsection (B) shall be posted and marked "TREATMENT INCOMPLETE". The tag shall be in sight and readily available for inspection after the treatment has been made and, if applicable, the slab has been poured. The tag may be placed upon an onsite contractor's permit or inspection board. If a customer file tag is required by the contractor, a duplicate tag marked "DUPLICATE" may be pre-

pared and posted or delivered to the requestor.—

B. Tags shall contain at a minimum the following information:—

1. Name of business.—
2. Address of business.—
3. Telephone number of business.—
4. Business license number.—
5. Location of project.—
6. Date of application.—
7. Time application was begun.—
8. Time application was completed.—
9. Trade name of chemical used.—
10. Strength of chemical preparation used, written as a percentage of active ingredient.—
11. Number of gallons of chemical preparation applied.—
12. Square footage treated.—
13. Linear footage treated.—
14. Type of slab construction.—
15. Signature of applicator.—
16. Certification number of applicator or written “NONE” if not certified.—

C. The information written on the pretreatment tag shall be an accurate representation of the treatment performed.—

D. Information described in subsection (B)(5) through (16) shall be made part of a company’s treatment records. The name of the applicator may be recorded in lieu of the applicator’s signature.—

R4-29-409. Occurrence of Termites After a Pretreatment Repealed

A. If, within five years of the date of the original pretreatment, subterranean termites occur in or on a structure that has been pretreated, retreatment shall be applied in accordance with the specifications on the label of a termiticide available for use.—

B. For residential structures of one or two units, complete treatment of the entire exterior perimeter of the structure shall be rendered upon the third occurrence of subterranean termites on the exterior of a structure in a five-year period from the date of the original pretreatment.—

C. For residential structures of one or two units, complete post-construction treatment as specified in R4-29-410 of the entire structure shall be rendered upon the third occurrence of subterranean termites within the interior of a structure in a five-year period from the date of the original pretreatment.—

R4-29-410. Post-construction Treatments for Subterranean Termites Repealed

A. Applications of pesticides for post-construction control of subterranean termites shall be made in accordance with specifications of the label of the termiticide used and in a manner to provide an unbroken chemical barrier between the termites in the soil and the cellulose products in the structure. Critical areas shall be treated. Treatment holes shall be spaced to provide a continuous chemical barrier. When drilling and injection is used as a method of application, treatment holes shall be spaced no greater than 24 inches apart except when such application is precluded by label, unique structural feature or application technique.—

B. For the purpose of post-construction treatments, critical areas shall include critical areas identified by the label and soil in accessible or visible areas of:—

1. Penetrations or protrusions through the slab including all plumbing, utility services, and other openings.—
2. Controlled cracks and expansion joints.—
3. Other visible cracks greater than 1/16 inch wide.—
4. Abutments of slabs and of slabs and foundation walls.—
5. Changes of grade including sunken or elevated slab construction.—
6. Interior and exterior of foundation walls except in monolithic slab construction where only the exterior is treated.—
7. Perimeter of interior areas where concrete is not poured.—
8. For raised foundation construction, around piers, pillars, pipes or other objects that extend from the soil to the structure.—

C. In the event that a particular aspect of post-construction termite control is not specifically covered on the chemical labeling, the minimum standards of good and workmanlike post-construction termite control shall be determined by evidence of compliance with these rules and use in accordance with pesticide manufacturers’ recommendations, established usage, procedure and acceptable industry practice prevailing in the state when such work was performed.—

D. Holes drilled in construction elements of commonly occupied areas of the structure including unfinished basements, enclosed porches, garages and workshops shall be securely plugged with a nonporous and noncellulose material.—

R4-29-412. Wood Infestation Reports; General Provisions Repealed

A. When used in conjunction with a sale or refinancing of a structure, the terms “termite report”, “termite inspection” or “wood destroying organism report” shall be considered synonymous with a wood infestation report.—

- ~~B.~~ Wood infestation reports shall be made on the form specified in Appendix A. When required by other state or federal agencies, other wood infestation reports may be completed in addition to, but not in lieu of, the form specified in Appendix A. Within 180 days of the effective date of this rule, each business licensee who prepares wood infestation reports shall adopt and use the form specified in Appendix A.—
- ~~C.~~ Wood infestation reports shall be completed and signed by the employee who made the inspection and who is certified in the category of wood destroying organisms.—
- ~~D.~~ Location of evidence of infestation and damage shall be represented on the wood infestation report by a graph or diagram.
- ~~E.~~ The final office copy of a wood infestation report shall be completed and filed at the registered office within seven working days.—
- ~~F.~~ The number of the termite action registration reports prepared subsequent to a wood infestation report shall be placed on the office copy of the wood infestation report.—
- ~~G.~~ Each wood infestation report prepared shall be consecutively numbered and retained by the company for at least three years. Each wood infestation report shall be filed in consecutive order except that a licensee who chooses to file wood infestation reports other than in consecutive order may do so only if a master list is maintained which shall be sorted by consecutive number and which shall include the date of action and file heading under which the wood infestation report is maintained.—
- ~~H.~~ Logos and other statements of advertisement shall not be placed upon the report.

R4-29-413. Wood Infestation Reports; Information Required Repealed

- ~~A.~~ A wood infestation report shall accurately list or report:
 - 1. Name, address, phone number and business license number of the inspecting company. This information may be pre-printed.—
 - 2. Date of inspection.—
 - 3. Name of owner, seller or buyer.—
 - 4. Address of inspected property.—
 - 5. Areas of the property which were obstructed or inaccessible at the time of inspection.—
 - 6. Inspected and uninspected structures at a site.—
 - 7. Purpose of the report.—
 - 8. Visible and accessible evidence of past or present infestation from wood destroying pests or organisms.—
 - 9. Visible and accessible evidence of damage from wood destroying organisms.—
 - 10. When treatment is indicated, the organisms to be treated, chemicals to be used, and warranty to be issued.—
 - 11. Visible and accessible evidence of previous treatment.—
 - 12. Visible conditions conducive including those listed in R4-29-414.—
 - 13. Signature and certification number of person making the inspection.—
- ~~B.~~ Inspection may be limited to only those areas which are visible and accessible by probing or sounding at the time of inspection. For the purposes of this rule, visible and accessible shall include that which can be seen or is accessible to physical sounding or probing with inspection instruments such as screwdrivers, ice picks and knife blades. Inspection shall include attics and crawl spaces which permit entry by the person making the inspection. Inspection may exclude areas concealed or obstructed by floor coverings, wall coverings, paneling, built-in structures such as bookcases, cabinets, appliances, equipment or furniture or portions of the structure to which access would require the removing or marring of finish work or moving of furniture, appliances or equipment.

R4-29-414. Wood Infestation Reports; Conditions Conducive Repealed

- ~~A.~~ Conditions conducive shall be considered to be those conditions deemed likely to lead to infestation from wood destroying pests or organisms.—
- ~~B.~~ For purposes of a wood infestation report, these conditions shall include but not be limited to:
 - 1. Faulty grade level. For construction where slab or floor is on or near grade, the existing earth level shall be considered grade. A faulty grade level shall exist when:
 - a. Top of foundation is even with or below the adjacent earth;
 - b. Bottom of stucco or siding is even with or below outside grade;
 - c. Bottom of joists or stringers is less than 12 inches above grade; or,
 - d. Slope is such that surface water drains toward the structure.—
 - 2. Inaccessible subareas or portions thereof. This shall include areas where there is less than 18 inches clear space between the bottom of the floor joists and the unimproved ground area.—
 - 3. Excessive cellulose debris. This shall include cellulose debris of a size that can be raked, or larger, and forms an aggregate of one cubic foot or more, stumps and wood imbedded in footings and in contact with earth, and firewood and lumber piles within six inches of a structure.—
 - 4. Earth to wood contact. Wood, whether it is internal or external in relation to the structure, and which is attached, affixed or securely abuts the structure and is in contact with the ground shall be considered earth to wood contact.—

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- 5. Excessive moisture. Conditions of excessive moisture shall be considered to exist when there is evidence of present or past moisture conditions which would foster the growth of fungus or visible moisture occurs on structural timbers.
- 6. Insufficient ventilation. Conditions of insufficient ventilation shall be considered to exist when there is less than one square foot of ventilation opening per 150 square feet of crawl space area, less than one square foot of ventilation opening for every 1,500 square feet of ground area covered by a vapor barrier, less than two areas permitting cross ventilation, or excessive moisture in an area because ventilation through the prescribed openings is not effective.

R4-29-415. Supplemental Wood Infestation Reports Repealed

- ~~A. A supplemental wood infestation report may be completed when an inspection is required from the original inspecting company to verify that either a corrective treatment has been performed or conditions previously listed as conducive have been corrected.~~
- ~~B. Each supplemental inspection shall be reported on a form of the same style as the original inspection and shall include the original inspection number clearly marked to show that it is now supplemental.~~
- ~~C. A business licensee may choose to perform a complete inspection and issue an original wood infestation report if the licensee cannot otherwise verify that all corrections have been made.~~
- ~~D. An inspection made over 30 days after an original inspection date shall require a complete inspection and not a supplemental inspection.~~

R4-29-417. Termite Action Registration Report Repealed

- ~~A. A termite action registration report shall be submitted to the Commission on a form or in a format provided by the Commission for each termite action performed at a project.~~
- ~~B. A termite action shall mean a completed preventative or initial corrective control method or treatment for any termite species, or a wood infestation report. Post construction treatments performed under a previously existing warranty and supplemental wood infestation reports shall not be reported.~~
- ~~C. For the purpose of reporting, a pretreatment shall be considered complete on the date of the application of termiticide to the substrate beneath the primary slab at a project. In the event of multiple slab establishment at a single project, the completion date may be the date of the last treatment prior to final concrete pour.~~
- ~~D. For each action involving a pretreatment, the registration form shall be marked to indicate if the exterior barrier has been established.~~
- ~~E. A separate termite action registration report form shall be filed for the post construction preventative treatment performed to establish the exterior barrier except as required in R4-29-409(B) or an existing warranty.~~
- ~~F. Data submitted on the termite action registration report shall include all items listed in A.R.S. § 32-2304(A)(13) and:
 - 1. The business license number of the company which performed the work;
 - 2. The qualifying party or advisor number; and
 - 3. For a wood infestation report: an indication of evidence of infestation, treatment performed, damage present, conditions conducive, and corrective actions taken; or
 - 4. For a post construction termite treatment: an indication of type of treatment, target organism, chemical used, strength of chemical used as represented by the percentage of active ingredient, and amount of chemical used; or
 - 5. For a preconstruction termite treatment or a post construction preventative treatment to establish the exterior vertical barrier: the chemical used, strength of chemical used as represented by the percentage of active ingredient, amount of chemical used, and, as applicable, square and linear footage treated.~~

R4-29-418. Termite Action Registration Report Fee Repealed

- ~~A. A filing fee as set forth in A.R.S. § 32-2304(D) shall accompany each completed form for any termite action as described in R4-29-417(B) except as exempted in subsection (B) of this rule.~~
- ~~B. Actions which are supplemental to a completed project shall be exempt from a filing fee. A fee shall not be paid for preventative treatments performed by the original pretreating company after a pretreatment for the purpose of establishing an exterior barrier.~~
- ~~C. Each termite action registration report or fee submitted to the Commission later than 30 days from a completed termite action shall be subject to the late filing fee set forth in R4-29-211.~~

ARTICLE 5. HEARINGS AND CONSENT ORDERS REPEALED

R4-29-501. Hearings, Settlement Conferences and Consent Orders Repealed

- ~~A. These rules of practice shall be applicable to hearings before the Commission and its duly appointed hearing officers.~~
- ~~B. A person may appear on the person's own behalf or be represented by counsel.~~
- ~~C. Hearings shall be judicial but not formal. The hearing officer shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, and directs the order of proof, and may question the parties and witnesses. Witnesses shall testify under oath or affirmation, and a record of the proceedings shall be made and kept. Each~~

party has the right to cross-examine the witnesses who testify, to inspect documents, and to submit rebuttal evidence.

- ~~D.~~ Attendance at hearings may be compelled. The affixing of the seal of the Commission and the signature of a member of the Commission or executive director or their agent shall be attestation of a subpoena compelling the appearance of a witness or the production of documentary evidence. A party desiring the Commission to issue a subpoena to compel the appearance of a witness at a hearing shall make written application to the executive director. Service of such subpoena shall be made by the party applying for same. Service shall be deemed to be complete at the time actually made.
- ~~E.~~ Service by the Commission of a decision, order, subpoena, notice of hearing, other notice or other process may be made by enclosing the same or a copy thereof in a sealed envelope, addressed to the party served at the last address shown in the Commission records, and mailed by certified mail in the United States Mail, and such service shall be deemed complete when so deposited in the mail.
- ~~F.~~ Service upon an attorney who has appeared on behalf of a party shall constitute service upon such party.
- ~~G.~~ In the event of the failure of a party to appear when requested at a proceeding before the Commission, the Commission or its hearing officer shall be free to conduct the proceeding and to act upon the evidence presented in that party's absence.
- ~~H.~~ Upon the completion of a hearing, the hearing officer shall submit to the Commission the hearing officer's recommended findings of fact, conclusions of law and order. The recommendations of the hearing officer shall be mailed to parties and the Office of the Attorney General. The Commission may adopt, modify, or reject the recommended findings, conclusions or order of the hearing officer. The Commission's decision shall be reduced to writing. A copy of the Commission's findings of fact, conclusions of law and order shall be mailed to the parties and the Office of the Attorney General.

R4-29-502. Review or Rehearing of Commission Decisions Repealed

- ~~A.~~ Except as provided in subsection (G), a party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission, not later than 20 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the person's last known residence or place of business when personal service or delivery cannot otherwise be accomplished.
- ~~B.~~ A motion for rehearing or review under this rule may be amended at any time before it is ruled upon by the Commission. A response may be filed within ten days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- ~~C.~~ A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:
 - ~~1.~~ Irregularity in the administrative proceedings of the Commission or of its hearing officer or the prevailing party, or an order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
 - ~~2.~~ Misconduct of the Commission or its hearing officer or the prevailing party.
 - ~~3.~~ Accident or surprise which could not have been prevented by ordinary prudence.
 - ~~4.~~ Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing.
 - ~~5.~~ Excessive or insufficient penalties.
 - ~~6.~~ Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
 - ~~7.~~ That the decision is not justified by the evidence or is contrary to law.
- ~~D.~~ The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- ~~E.~~ Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on this matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review shall specify the grounds therefor.
- ~~F.~~ When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after such service, serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- ~~G.~~ If in a particular decision the Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commission's final decisions.
- ~~H.~~ For purposes of this Section, the terms "contested case" and "party" are defined as provided in A.R.S. § 41-1001.

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I. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing or review of decisions of the Commission, such statutory provisions govern.

R4-29-503. ~~Settlement Conferences Repealed~~

- ~~**A.** The Commission may designate one or more staff members to conduct an informal settlement conference, negotiate resolutions between parties, and make recommendations of resolution to the Commission.~~
- ~~**B.** Written notice of settlement conference shall be served on the complainant and, as applicable, on the business licensee, pest control advisor, qualifying party, applicator or registered employee. Notice shall be served personally or by mail to the last address known to the Commission and shall include time and place of the conference and issues to be discussed.~~
- ~~**C.** Parties may be represented by legal counsel.~~
- ~~**D.** Conferences shall be conducted informally. Witnesses shall not be placed under oath. Subpoenas shall not be issued.~~
- ~~**E.** Proceedings of a settlement conference shall not be recorded by recording or stenographic device. A general written record of the proceeding may be made.~~
- ~~**F.** Statements made at a settlement conference shall not be introduced in evidence at a formal hearing unless all parties have consented to such.~~

R4-29-504. ~~Settlement Conference Consent Orders Repealed~~

- ~~**A.** After a settlement conference the Commission may impose a disciplinary sanction, requirement for remedial action, or penalty by means of a consent order.~~
- ~~**B.** The Commission may choose to accept or reject the agreement reached between agency staff and licensee, advisor, qualifying party, applicator or registered employee.~~
- ~~**C.** After review and approval by the Commission, a consent order shall be prepared in writing and signed by the chairman of the Commission or a designated agent. Each consent order shall include:

 - ~~1. The general nature of complaint;~~
 - ~~2. The specific action to be taken by the licensee, advisor, qualifying party, applicator or registered employee;~~
 - ~~3. The penalty, if any; and~~
 - ~~4. The time for compliance, if any, for corrective action.~~~~
- ~~**D.** The consent order shall be executed only upon written acceptance of, as applicable, the business licensee, advisor, qualifying party, applicator or registered employee.~~

Appendix A. ~~Wood Infestation Report Form Repealed~~

STATE OF ARIZONA STRUCTURAL PEST CONTROL COMMISSION WOOD DESTROYING ORGANISM INFORMATION FOR EXISTING INFORMATION		1A. VA CASE NUMBER	2. DATE
		1B. HUD/VA CASE NUMBER	1E. WIR #
		1C. <input type="checkbox"/> ORIGINAL REPORT <input type="checkbox"/> SUPPLEMENTAL REPORT	1F. TARE #
		4D. PURPOSE OF REPORT <input type="checkbox"/> REAL ESTATE: <input type="checkbox"/> Sale of Property <input type="checkbox"/> Refinancing <input type="checkbox"/> TREATMENT ONLY: <input type="checkbox"/> Preventative <input type="checkbox"/> Corrective	
IF IT IS NOT ALWAYS POSSIBLE TO DETECT EVIDENCE OF WOOD DESTROYING ORGANISM INFESTATION, READ THIS INSPECTION REPORT IN ITS ENTIRETY. READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM			
1. The VA case number or HUD/FHA case number shall be inserted in item 1 by the lender or pest control company. 2. When treatment is indicated in Item 8C, the organisms treated will be named, the data on application method and chemicals shall be entered in Item 10. Proper control measures may include issuance of warranty. Warranty information should also be entered on this form. Proper control measures are those which follow good acceptable industry practices. 3. If visible evidence is found, organisms causing such evidence will be listed in Item 8A and visible damage resulting from such infestation will be noted in Item 8D. 4. Areas that were inaccessible or obstructed (Item 7) may include, but are not limited to, wall covering, fixed ceiling, floor covering, furniture or stored articles. The Pest Control Operator (PCO) should list in Item 7, these obstructions or areas which inhibit the inspection. 5. Item 8A may be checked when the PCO is not authorized to perform control measures by the owner/seller or control measures cannot be performed due to conditions beyond control, e.g. obstructions, weather, etc. 6. Visible evidence of conditions conducive to infestation from subterranean termites shall be reported on the second page of this form (earth wood contact, faulty grades, insufficient ventilation, etc.).			
3A. NAME OF INSPECTION COMPANY		5A. NAME OF PROPERTY OWNER/SELLER	
3B. ADDRESS OF INSPECTION COMPANY (Include ZIP Code)		5B. ADDRESS OF PROPERTY (Street, City, ZIP)	
3C. TELEPHONE NUMBER (Include Area Code)	4. PEST CONTROL BUSINESS LICENSE NUMBER	6C. STRUCTURE(S) INSPECTED	
5D. UNINSPECTED STRUCTURES			
FINDINGS			
6. WERE ANY AREAS OF THE PROPERTY OBSTRUCTED OR INACCESSIBLE? <input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, complete Item 7)		7. OBSTRUCTIONS OR INACCESSIBLE AREAS This inspection did not include areas which were obstructed or inaccessible at the time of the inspection. ALSO SEE PAGE 2.	

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R4-29-307	New Section
Article 4	New Article
R4-29-401	New Section
R4-29-402	New Section
R4-29-403	New Section
Article 5	New Article
R4-29-501	New Section
R4-29-502	New Section
R4-29-503	New Section
R4-29-504	New Section
R4-29-505	New Section
Article 6	New Article
R4-29-601	New Section
R4-29-602	New Section
R4-29-603	New Section
R4-29-604	New Section
R4-29-605	New Section
R4-29-606	New Section
R4-29-607	New Section
R4-29-608	New Section
Article 7	New Article
R4-29-701	New Section
R4-29-702	New Section
R4-29-703	New Section
R4-29-704	New Section
R4-29-705	New Section
R4-29-706	New Section
R4-29-707	New Section
R4-29-708	New Section

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

Authorizing statute: A.R.S. § 32-2304(A)(1)

Implementing statute: A.R.S. §§ 32-2301 through 32-2329

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 3380, September 15, 2006

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

Name: Lisa Gervase, Executive Director

Address: Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5514

Telephone: (602) 255-3664

Fax: (602) 255-1281

E-mail: lisagervase@sb.state.az.us

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

The Commission is making new rules that are consistent with statute and industry and agency practice. In another rulemaking, the Commission is repealing its current rules, which were made in 1992. This rulemaking is partially in response to a five-year-review report approved by the Council on June 6, 2006.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or 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 Commission does not intend to review or rely on any studies.

7. 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

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

Although these rules are new, the subject matter they address is not new. The Commission has had rules since 1992 that establish licensing procedures and regulatory standards. The rules will have economic impact on those who seek

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to be licensed or are licensed by the Commission. The costs relate to completing an application and paying application, examination, and fingerprint processing fees, obtaining continuing education, and complying with regulatory standards designed to protect the public and environment. These costs, which are a cost of doing business that is passed to consumers, are offset by the economic benefit of being able to provide structural pest control services.

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

Name: Lisa Gervase, Executive Director
Address: Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5514
Telephone: (602) 255-3664
Fax: (602) 255-1281
E-mail: lisagervase@sb.state.az.us

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: November 9, 2006
Time: 9:00 a.m.
Location: Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5514

The rulemaking record will close at the end of the oral proceeding on November 9, 2006.

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

None

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. STRUCTURAL PEST CONTROL COMMISSION

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

R4-29-101. ~~Repealed~~ Definitions
R4-29-102. ~~Repealed~~ License Categories and Scope of Work
R4-29-103. ~~Expired~~ Complaint Information
R4-29-104. ~~Repealed~~ Providing Information to the Commission
R4-29-105. ~~Expired~~ Fees; Charges; Exemption
R4-29-106. ~~Expired~~ Joint Responsibility
R4-29-107. ~~Repealed~~ Licensing Time-frames
Table 1. ~~Repealed~~ Time-frames (Calendar Days)

ARTICLE 2. ~~REPEALED~~ OBTAINING, RENEWING, ACTIVATING OR INACTIVATING A LICENSE; EXAMINATION; CONTINUING EDUCATION REQUIREMENT; APPROVAL OF CONTINUING EDUCATION

Section

R4-29-201. ~~Repealed~~ Activities that Require a License; General Provisions
R4-29-202. ~~Repealed~~ License Exemptions; Unlicensed Persons
R4-29-203. ~~Repealed~~ Obtaining an Applicator License

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- R4-29-204. ~~Repealed~~ Obtaining a Qualifying Party License
- R4-29-205. ~~Repealed~~ Licensing Examination for an Applicator or Qualifying Party Applicant
- R4-29-206. ~~Repealed~~ Obtaining a Business License
- R4-29-207. ~~Repealed~~ Renewing an Applicator, Qualifying Party, or Business License
- R4-29-208. ~~Repealed~~ Obtaining a Temporary Qualifying Party License
- R4-29-209. ~~Repealed~~ Renewing a Temporary Qualifying Party License
- R4-29-210. ~~Expired~~ Inactivating or Activating an Applicator License
- R4-29-211. ~~Repealed~~ Inactivating or Activating a Qualifying Party License
- R4-29-212. ~~Repealed~~ Broadening an Applicator or Qualifying Party License
- R4-29-213. ~~Repealed~~ Branch Office Registration
- R4-29-214. ~~Repealed~~ Change in a Business Licensee
- R4-29-215. ~~Repealed~~ Continuing Education Requirement for an Applicator or Qualifying Party
- R4-29-216. ~~Repealed~~ Requirements for Approval of Continuing Education

ARTICLE 3. ~~REPEALED~~ APPLICATOR DUTIES AND RESPONSIBILITIES

Section

- R4-29-301. ~~Repealed~~ Compliance with Commission Monitoring
- R4-29-302. ~~Repealed~~ Providing Notice to Customers
- R4-29-303. ~~Repealed~~ Performing a Wood-destroying Insect Inspection
- R4-29-304. ~~Repealed~~ Using Pesticides and Devices
- R4-29-305. ~~Repealed~~ Performing Wood-destroying Insect Control
- R4-29-306. ~~Repealed~~ Storing and Disposing of Pesticides and Devices
- R4-29-307. ~~Repealed~~ Applicator Recordkeeping

ARTICLE 4. ~~REPEALED~~ SUPERVISING APPLICATOR DUTIES AND RESPONSIBILITIES

Section

- R4-29-401. ~~Repealed~~ Compliance with Applicator Duties and Responsibilities
- R4-29-402. ~~Repealed~~ Supervising an Applicator
- R4-29-403. ~~Expired~~ Supervising Applicator Recordkeeping

ARTICLE 5. ~~REPEALED~~ QUALIFYING PARTY DUTIES AND RESPONSIBILITIES

Section

- R4-29-501. ~~Repealed~~ Compliance with Applicator Duties and Responsibilities
- R4-29-502. ~~Repealed~~ Compliance with Supervising Applicator Duties and Responsibilities
- R4-29-503. ~~Repealed~~ Qualifying a Business License
- R4-29-504. ~~Repealed~~ Qualifying Party Management
- R4-29-505. ~~Repealed~~ Qualifying Party Recordkeeping

ARTICLE 6. BUSINESS LICENSEE DUTIES AND RESPONSIBILITIES

Section

- R4-29-601. Compliance with Applicator Duties and Responsibilities
- R4-29-602. Compliance with Supervising Applicator Duties and Responsibilities
- R4-29-603. Supervision of Qualifying Party
- R4-29-604. Qualifying Party Required
- R4-29-605. Business Management
- R4-29-606. Storing Pesticides and Devices
- R4-29-607. Equipping a Service Vehicle
- R4-29-608. Providing Termite Treatment
- R4-29-609. Business Licensee Recordkeeping

ARTICLE 7. INSPECTIONS; INVESTIGATIONS; COMPLAINTS; DISCIPLINARY PROCEDURES

Section	
<u>R4-29-701.</u>	<u>General Provisions</u>
<u>R4-29-702.</u>	<u>Inspections, Investigations, and Complaints</u>
<u>R4-29-703.</u>	<u>Settlement Conferences</u>
<u>R4-29-704.</u>	<u>Consent Agreements</u>
<u>R4-29-705.</u>	<u>Hearing Procedures</u>
<u>R4-29-706.</u>	<u>Review or Rehearing of a Commission Decision</u>
<u>R4-29-707.</u>	<u>Judicial Review of Commission Order</u>
<u>R4-29-708.</u>	<u>Disciplinary Action</u>

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R4-29-101. ~~Repealed~~ Definitions

The definitions in A.R.S. § 32-2301 et seq. apply to this Chapter. Additionally, in this Chapter:

“Administratively complete” means an application contains all components required by statute or this Chapter to be submitted to the Commission to enable the Commission to determine whether to grant a license or approval.

“Advertisement” means a written or oral notice, including a business card or telephone directory listing, which is intended, directly or indirectly, to induce a person to enter into an agreement for pest management services.

“Applicant” means:

An individual requesting an initial or renewal applicator, temporary qualifying party, or qualifying party license;

One of the following if requesting an initial or renewal business license:

An individual, for a sole proprietorship;

An officer, for a corporation;

The managing or general partner, for a partnership or limited liability partnership;

The manager or two members, for a limited liability company or professional liability company; or

A designated agent of a state agency or political subdivision or appointed or elected individual or body, an appointed or elected individual, or a member of an appointed or elected body; or

An individual or entity requesting approval of a continuing education course.

“Applicator” means an individual licensed by the Commission as qualified to provide pest management services when working under both a qualifying party and business license.

“Before construction,” as used in the Commission’s statutes, means pretreatment.

“Broadening” means to add another category of work to an existing license.

“Continuing education” means a planned course or program that the Commission approves under R4-29-216.

“Continuing education unit” means 60 minutes of participation in continuing education.

“Control” means to exterminate, eradicate, destroy, kill, repel, sterilize, mitigate, remove, or a combination of these activities.

“De minimis violation” has the same meaning as prescribed in A.R.S. § 32-2301 and means an act or omission by a licensee for which the Commission provides an opportunity to correct the act or omission informally rather than filing a complaint against the licensee.

“Disassociate” means to die, become ill or disabled, resign, retire, be terminated, or be called to active military duty.

“During-construction treatment,” as used in the Commission’s statutes, means new-construction treatment.

“Entire structure” means all critical areas as defined in this Chapter and as specified on product labeling for both the interior and exterior of a structure.

“EPA” means the U.S. Environmental Protection Agency.

“Final-grade treatment” means establishing vertical barriers at the exterior of foundation walls in stem-wall construction or at the exterior of grade beams in monolithic construction.

“Fog or fogging” means applying a pesticide by a flammable, aerosolizing thermal or other generator that forms particles less than 10 microns in diameter.

“Food-handling establishment” means a place, other than a private residence, in which food is received, served, stored, packaged, prepared, or processed.

“Fumigant” means a chemical substance with a vapor pressure greater than five millimeters of mercury at 25 degrees Centigrade that is used to destroy plant or animal life.

“Fumigation” means a method of pest management that completely fills an area with a fumigant to suffocate or poison pests within the area.

“Fungi” means saprophytic and parasitic organisms that lack chlorophyll such as molds, rusts, mildews, smuts, and yeast, except those on or in living people or animals or processed foods, beverages, or pharmaceuticals.

“Fungi inspection report” means the document authorized by A.R.S. § 32-2324.01 and prepared in connection with the sale or refinancing of real property regardless of whether the report is used as part of the sale or refinancing.

“Inquiry” means a threshold investigation by the Commission to determine whether the Commission has jurisdiction in a matter and if so, the likelihood that there has been a violation of the Commission’s statutes or this Chapter or misuse of a pesticide.

“Label” means a written, printed, or graphic document that is approved by the EPA and on or attached to a pesticide container, the wrapper of a pesticide container, or a device.

“Labeling” means a written, printed, or graphic document that is authorized by the manufacturer or a state or federal agency to accompany a pesticide or device, or is referred to on the label or in literature accompanying the pesticide or device.

“Late” means a document required to be submitted to the Commission is post-marked after the date the document is due or is not received by the Commission.

“Liability insurance,” as used in A.R.S. § 32-2313, means insurance that protects the business licensee named in the insurance policy and any person working with the express or implied permission of the named business licensee, against loss from legal liability for bodily injury or property damage as a result of the named business licensee providing pest management services.

“Manner inconsistent with the label” means the use of a pesticide in a manner not permitted by the label or labeling.

“MSDS” means material safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

“New-construction treatment” means a termite treatment that complies with standards in the Commission’s statutes and this Chapter, protects all cellulose components of a structure from subterranean termites, and is performed after a permanent concrete slab foundation is installed or after footings and supports for a raised foundation are installed but before the structure or a final grade is completed.

“Next business day,” as used in A.R.S. § 32-2323(G), means the day after the 30th calendar day if the 30th calendar day is a Saturday, Sunday, or state holiday.

“Non-food area of a food-handling establishment” means a lavatory, floor drain, entrance or vestibule, office, garage, mop closet, can or bottle storage, or garbage, locker, machine, or boiler room.

“Of employment,” as used in A.R.S. § 32-2312(E), means the date on which an employee of a business licensee first provides pest management services.

“Other equivalent item,” as used in A.R.S. § 32-2313(H) regarding financial responsibility, means an irrevocable and unconditional letter of credit, from an Arizona-chartered or federally chartered financial institution, that is filed with the Commission.

“Party” has the same meaning as prescribed in A.R.S. § 41-1001.

“Person” means an individual, sole proprietorship, corporation, limited liability corporation, partnership, association, governmental subdivision or unit of a governmental subdivision, public or private organization, or governmental agency.

“Pest” means a vertebrate or invertebrate insect, bird, mammal, organism, or a weed or plant pathogen that is in an undesirable location.

“Pest management services” means the tasks that comprise the business of structural pest control or structural pest control as defined in A.R.S. § 32-2301.

“Pesticide,” as defined in A.R.S. § 32-2301, includes an insecticide, fungicide, rodenticide, termiticide, fumigant, larvacide, adulticide, herbicide, avicide, or molluscicide.

“Post-construction treatment” means a treatment that complies with standards in the Commission’s statutes and this Chapter to control subterranean termites or other wood-destroying insects in an existing structure, and is performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal under A.R.S. § 32-2323(A) and (B).

“Practical experience,” as used in A.R.S. § 32-2314, means field work, research, training, teaching, or supervision relevant to pest management services regardless of whether compensation is received, and coursework as required by the Commission’s statutes.

“Pretreatment” means a termite treatment that complies with standards in the Commission’s statutes and this Chapter, protects all cellulose components of a structure from subterranean termites, is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation, and establishes thorough and complete horizontal and vertical treated barriers.

“Primary service,” as used in A.R.S. § 32-2311(A)(6)(c), means applying an herbicide as the only or predominant service under a verbal or written contract to maintain a property.

“Prior to construction,” as used in the Commission’s statutes, means pretreatment.

“Prior violation of the same type” means failure to comply with a statute or rule regarding use of a pesticide, failure to comply with a statute or rule not regarding the use of a pesticide, failure to comply with a Commission order, or engaging in unlicensed activity, for which disciplinary action was taken within the five years preceding similar conduct for which current disciplinary action is sought.

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“Project” means an individual address or a privately owned or individually owned dwelling.

“Public liability,” as used in A.R.S. § 32-2313, means protection against legal liability for the death, injury, or disability of any human being.

“Repeated de minimis violations,” as used in A.R.S. § 32-2321, means at least three similar violations of statute or rule by the same licensee within five years.

“Service container” means a receptacle, other than the originally labeled receptacle provided by the manufacturer, that is used to hold, store, or transport a pesticide concentrate or use-dilution preparation.

“Service vehicle” means a motor vehicle, including a trailer attached to the motor vehicle, used regularly to transport a licensee and equipment or pesticides used to provide pest management services.

“Signal word” means a word printed on a label that indicates the toxicity level of the pesticide in the container to which the label is affixed.

“Special Local Need registration” means an authorization from the Arizona Department of Agriculture to use a pesticide, which meets an Arizona-specific need, in Arizona according to the terms of the registration.

“Specimen label” means a label other than the label attached to a pesticide container that contains the same information as the label attached to the pesticide container.

“Sterilant,” as used in A.R.S. § 32-2311(A)(6)(b), means a product that may prevent vegetation growth for 12 or more months.

“Structure” means all parts of a building, whether vacant or occupied, in all stages of construction.

“Subterranean termites” means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.

“Supplemental wood-destroying insect inspection” means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.

“Tag” means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.

“TARF” means termite action report form.

“Temporary qualifying party” means an individual who is licensed by the Commission under R4-29-208 for a limited time to ensure the training, supervision, and equipping of a business licensee’s applicators after the business licensee’s qualifying party disassociates from the business.

“Termiticide” means a chemical registered by the EPA and the Arizona Department of Agriculture and used for control of termites.

“Water-retention basin” means an area to temporarily hold water run-off until the water dissipates.

“Web site” means the Commission’s Internet site at www.sb.state.az.us or a subsequent uniform resource locator.

“WDIIR” means wood-destroying insect inspection report, which is a written report on a form approved by the Commission that is prepared in connection with the sale or refinancing of real property regardless of whether the report is used as part of the sale or refinancing.

R4-29-102. ~~Repealed~~ License Categories and Scope of Work

For the purpose of this Chapter and A.R.S. § 32-2301 et seq., license categories and the scope of work for each category are as follows:

1. Category B1 (General pest and public health) is limited to controlling general terrestrial vertebrate and invertebrate pests in or about a residential or other structure, public health pests, and pests not included in another license category but does not include pests in forests, aquatic food production, or agricultural plant areas.
2. Category B2 (Wood-destroying insect control) is limited to controlling wood-destroying insects in or about a structure by a means other than use of a fumigant.
3. Category B3 (Weed and right-of-way control) is limited to controlling terrestrial weeds in all areas other than a forest or agricultural plant or aquatic area.
4. Category B4 (Fumigation) is limited to using fumigants.
5. Category B5 (Turf and ornamental horticulture) is limited to controlling plant and turf pests, diseases, or viruses and using plant growth regulators on ornamental horticultural plants and turf in all areas other than a forest or agricultural plant area and except by means of a fumigant.
6. Category B7 (Fungi inspection) is limited to inspecting a structure for suspected fungi and completing a Commission-approved structural fungi inspection report.
7. Category B8 (Wood-destroying insect inspection) is limited to inspecting a structure for the items listed in R4-29-303 and reporting the results of the inspection on a WDIIR.
8. Category B9 (Aquatic) is limited to controlling pests, including weeds, in an aquatic area other than a water-retention basin or agricultural or forest area, and except for mosquito control.

R4-29-103. ~~Expired~~ Complaint Information

- A. A person may submit information to the Commission alleging unlicensed activity or misuse of a pesticide or violation of law by a licensee or a person who is not licensed. Information may be submitted in writing by mail, electronic mail, or fax, or orally by telephone or personal appearance.
- B. The Commission shall ensure that information regarding the complaint process is available on the Commission's web site.
- C. If the Commission determines that the public health may be in danger, the Commission shall refer a complaint or the results of an investigation to the Arizona Department of Health Services, another appropriate health-related agency, or the EPA.

R4-29-104. ~~Repeated~~ Providing Information to the Commission

- A. A person that wants the Commission to consider written information at a meeting shall submit the written information by the cut-off date established by the Commission.
- B. An individual who wants to address the Commission may do so by appearing at a Commission meeting and completing a request-to-speak form.
- C. The Commission shall ensure that Commission meeting dates and the cut-off date for each meeting are available on the Commission's web site.

R4-29-105. ~~Expired~~ Fees; Charges; Exemption

- A. Under the authority provided by A.R.S. § 32-2317, the Commission establishes and shall collect the following fees:
 - 1. For an applicator:
 - a. License application, \$30;
 - b. License broadening application, \$10;
 - c. License renewal application, active or inactive status, online, \$20;
 - d. License renewal application, active or inactive status, on paper, \$25; and
 - e. Duplicate license, \$20.
 - 2. For a qualifying party:
 - a. License application, \$150;
 - b. License broadening application, \$50;
 - c. License renewal during active status, online, \$120;
 - d. License renewal during active status, on paper, \$125;
 - e. License renewal during inactive status, online, \$20;
 - f. License renewal during inactive status, on paper, \$25;
 - g. Change from inactive to active status, \$125;
 - h. Temporary qualifying party license application, \$25;
 - i. Temporary qualifying party license renewal application, \$25; and
 - j. Duplicate license, \$20.
 - 3. For a business:
 - a. License application, \$75;
 - b. License renewal application, online, \$70;
 - c. License renewal application, on paper, \$75;
 - d. Branch office registration application, \$35;
 - e. Branch office registration renewal application, \$35; and
 - f. Duplicate license, \$20.
- B. Under the authority provided by A.R.S. § 32-2304(A)(21), the Commission establishes and shall collect a penalty that is double the license renewal fee for any license that is not renewed timely. The penalty is in addition to the license renewal fee.
- C. If the Commission administers the examination required under A.R.S. § 32-2312(C) or 32-2314(C), the Commission shall charge \$50 to cover the cost of providing this service. If the Commission enters into a contract with an examination service or testing vendor, an applicant shall pay to the examination service or testing vendor the examination cost established in the contract.
- D. Under the authority provided by A.R.S. § 32-2304(C), the Commission establishes and shall collect a fee of \$8 for each TARF required to be submitted under this Chapter except there is no fee to submit timely a TARF pertaining to a final-grade treatment.
- E. Under the authority provided by A.R.S. § 32-2304(C), the Commission establishes and shall collect a penalty of \$8 for a TARF that is filed within 180 days after it is due and a penalty of \$16 for a TARF that is filed more than 180 days after it is due. The penalty is in addition to the TARF filing fee under subsection (D). The penalty in this subsection applies to an untimely TARF pertaining to a final-grade treatment.
- F. Any payment to the Commission may be made by cash, credit or debit card, money order, or cashier's, certified, business, or personal check. If payment is made by money order or check, the payer shall make the money order or check payable to

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the Structural Pest Control Commission. If payment is made by business or personal check, payment is not credited until the check clears the bank. The Commission does not prorate fees. Fees are not refundable unless A.R.S. § 41-1077 applies. The Commission may refuse all forms of payment other than cash, cashier's check, or money order from a person that issued an insufficient-funds payment to the Commission.

- G. An employee of the Commission or the Arizona Department of Agriculture who applies for or holds a Commission-issued license is exempt from the fees in subsections (A) through (C).
- H. The Commission shall reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service.

R4-29-106. ~~Expired~~ Joint Responsibility

- A. A supervising applicator, qualifying party, or business licensee who supervises another person, whether the supervised person is licensed or unlicensed, shall ensure that the supervised person is properly trained and equipped and receives the supervision necessary for the supervised person to provide pest management services competently and safely.
- B. Under A.R.S. § 32-2308, a supervising applicator, qualifying party, or business licensee who supervises another person, whether the supervised person is licensed or unlicensed, may be held jointly responsible for the acts or omissions of the supervised person.
- C. It is an affirmative defense to joint responsibility as described in subsection (B) if a supervising applicator, qualifying party, or business licensee, complied with subsection (A) and can demonstrate that compliance with contemporaneously maintained records.

R4-29-107. ~~Repealed~~ Licensing Time-frames

- A. Overall time-frame. The Commission shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substantive review time-frames, begins when the Commission receives an application.
- B. Administrative completeness review time-frame.
 - 1. During the administrative completeness review time-frame, the Commission shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing. If the Commission does not provide notice to the applicant within the administrative completeness review time-frame, the Commission shall deem the application complete.
 - 2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the Commission receives the information.
 - 3. If an applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- C. Substantive review time-frame. The substantive review time-frame listed in Table 1 begins when an application is administratively complete or at the end of the administrative completeness review time-frame in Table 1, whichever occurs first. If the Commission determines during the substantive review that additional information is needed, the Commission shall send the applicant a comprehensive written request for additional information. Both the substantive review and overall time-frames are suspended from the date of the Commission's request until the date that the Commission receives the additional information. The applicant shall submit the additional information within the additional information period listed in Table 1. If the applicant fails to provide the additional information within the additional information period in Table 1, the Commission shall close the application. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- D. Within the overall time-frame listed in Table 1, the Commission shall:
 - 1. Deny a license or approval to an applicant if the Commission determines that the applicant does not meet all the substantive criteria required by the Commission's statutes and this Chapter; or
 - 2. Grant a license or approval to an applicant if the Commission determines that the applicant meets all the substantive criteria required by the Commission's statutes and this Chapter.
- E. If the Commission denies a license or approval under subsection (D)(1), the Commission shall provide a written notice of denial to the applicant that explains:
 - 1. The reason for the denial, with citations to supporting statutes or rules;
 - 2. The applicant's right to seek a fair hearing to challenge the denial; and
 - 3. The time for appealing the denial.

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Table 1. ~~Repealed~~ Time-frames (Calendar Days)

<u>Type of License, Registration, Change or Approval</u>	<u>Applicable Statute or Rule</u>	<u>Administrative Completeness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Review</u>	<u>Response to Additional Information</u>	<u>Overall Time-frame</u>
<u>Applicator</u>	<u>A.R.S. § 32-2312</u>					
<u>New</u>	<u>R4-29-203</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>180</u>	<u>130</u>
<u>Renewal</u>	<u>R4-29-207</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Broaden</u>	<u>R4-29-212</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>180</u>	<u>130</u>
<u>Activate</u>	<u>R4-29-210</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Qualifying Party</u>	<u>A.R.S. § 32-2314</u>					
<u>New</u>	<u>R4-29-204</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>180</u>	<u>130</u>
<u>Renewal</u>	<u>R4-29-207</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Temporary</u>	<u>R4-29-208</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>15</u>	<u>20</u>
<u>Renew</u>	<u>R4-29-209</u>	<u>10</u>	<u>10</u>	<u>100</u>	<u>15</u>	<u>110</u>
<u>Temporary</u>						
<u>Broaden</u>	<u>R4-29-212</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>180</u>	<u>130</u>
<u>Activate</u>	<u>R4-29-211</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Business</u>	<u>A.R.S. § 32-2313</u>					
<u>New</u>	<u>R4-29-206</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Renewal</u>	<u>R4-29-207</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Branch Office</u>	<u>R4-29-213</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Name Change</u>	<u>R4-29-214</u>	<u>30</u>	<u>90</u>	<u>100</u>	<u>15</u>	<u>130</u>
<u>Continuing Education Approval</u>	<u>A.R.S. § 32-2319</u> <u>R4-29-216</u>	<u>20</u>	<u>60</u>	<u>55</u>	<u>15</u>	<u>75</u>

ARTICLE 2. ~~REPEALED~~ OBTAINING, RENEWING, ACTIVATING OR INACTIVATING A LICENSE; EXAMINATION; CONTINUING EDUCATION REQUIREMENT; APPROVAL OF CONTINUING EDUCATION

R4-29-201. ~~Repealed~~ Activities that Require a License: General Provisions

- A.** Unless exempt under A.R.S. § 32-2311, an individual who provides pest management services shall obtain an applicator license from the Commission. An applicator shall perform pest management services only on behalf of a business licensed by the Commission.
- B.** To be licensed as a qualifying party, an individual shall also be licensed as an applicator.
- C.** A licensed business shall provide pest management services only if the licensed business employs at least one individual who holds a qualifying party license. A licensed business shall provide pest management services in a category only if the licensed business employs an individual who has an activated qualifying party or temporary qualifying party license in the category.
- D.** A licensed qualifying party or temporary qualifying party shall not qualify more than one licensed business. A licensed business may employ more than one licensed qualifying party.
- E.** An applicator or qualifying party shall provide pest management services only in the category for which the applicator or qualifying party is licensed. To provide pest management services in a new category, an applicator or qualifying party shall complete the license-broadening process described in R4-29-212.
- F.** Under A. R. S. § 32-2312(D), an applicant for licensure is required to be of good moral character. The Commission shall deny a license to an applicant determined not to be of good moral character. In determining whether an applicant is of good moral character, the Commission shall consider whether the applicant:
 - 1.** Committed an act, which, if committed by a licensee, would be grounds for disciplinary action against the licensee;
 - 2.** Has been convicted of a felony or a misdemeanor; or
 - 3.** Cheated on a licensing examination.
- G.** The holder of a license issued by the Commission shall not assign or transfer the license.

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- H. An applicator license expires on May 31 except that a new applicator license that is issued in May is valid until May 31 of the following year.
- I. A qualifying party or business license expires on December 31 except that a new qualifying party or business license issued in December is valid until December 31 of the following year.
- J. If a licensee files a timely and complete renewal application, the existing license does not expire until the Commission issues a notice granting or denying renewal. If the Commission denies license renewal, the existing license does not expire until all administrative appeals are exhausted.
- K. Unless a power or duty is not delegable under A.R.S. § 32-2304(G), the Commission's staff may act on behalf of the Commission.

R4-29-202. ~~Repeated~~ License Exemptions; Unlicensed Persons

- A. In addition to the exemptions in A.R.S. § 32-2311, a person is not required to be licensed by the Commission if:
 - 1. The person provides general information about a label or labeling, identifying or controlling a pest, integrated pest management, or use of an EPA- or Arizona-Department-of-Agriculture-registered pesticide, does not directly or indirectly charge for the information provided, and does not make an onsite recommendation; or
 - 2. The person performs sales work that does not include any of the tasks identified under A.R.S. § 32-2301 as comprising the business of structural pest control or structural pest control.
- B. Even if not required to be licensed by the Commission, a person shall not misuse a pesticide or device. Misuse includes using, applying, handling, or storing a pesticide in a manner inconsistent with the label or labeling, or using a device for an unintended purpose as indicated by the literature accompanying the device.
- C. An allegation that an unlicensed person misused a pesticide may be investigated by the Commission or the EPA and may be prosecuted by the EPA.
- D. If a licensee fails to renew because the licensee is on active military duty but applies for renewal within 100 days of honorable separation from active military duty, the Commission shall process the renewal application as timely and not charge the penalty prescribed under R4-29-105.
- E. Under A.R.S. § 32-2312, an unlicensed person employed by a business licensee may apply pesticides for a maximum of 90 days from the date of employment if the unlicensed person is supervised by a licensed applicator or qualifying party and the supervising applicator or qualifying party:
 - 1. Is licensed in the category for which supervision is provided;
 - 2. Provides immediate supervision while the unlicensed person performs wood-destroying insect control or fumigation, or uses a restricted-use pesticide; and
 - 3. Provides direct supervision while the unlicensed person performs pest management services not listed in subsection (E)(2).

R4-29-203. ~~Repeated~~ Obtaining an Applicator License

- A. An applicant for an applicator license shall submit the following information to the Commission on a form obtained from the Commission:
 - 1. Full name;
 - 2. Applicator license number, if any;
 - 3. Physical address;
 - 4. Mailing address, if different from the physical address;
 - 5. Telephone number;
 - 6. Electronic mail address, if any;
 - 7. Date of birth;
 - 8. Social Security number;
 - 9. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, submit:
 - a. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - b. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - c. A complete set of fingerprints; and
 - d. The fee for fingerprint processing;
 - 10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 - 11. Name of employer, if any;
 - 12. Employer's business license number, if applicable;
 - 13. Employer's telephone number, if applicable;

14. License category for which application is made; and
15. The applicant's dated signature affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit the fee specified in R4-29-105.
- C.** Under the authority at A.R.S. § 32-2304(B)(2), if the Commission determines it is in the best interest of the state, the Commission shall require an applicant to submit a complete set of fingerprints and the fee for fingerprint processing.
- D.** If the Commission determines that an applicant is eligible for licensure, the Commission shall notify the applicant that the applicant may schedule and take a licensing examination described under R4-29-205.
- E.** If the Commission determines there may be cause to deny a license to an applicant, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.
- F.** The Commission shall issue a license to an applicant who meets all of the qualifications in A.R.S. § 32-2311 and this Chapter and passes the licensing examinations. The license authorizes the applicator to provide pest management services until May 31 if the applicator is employed by a licensed business.

R4-29-204. ~~Repealed Obtaining a Qualifying Party License~~

- A.** Before applying for a qualifying party license, an applicant shall hold an applicator license for each category in which a qualifying party license is sought and fulfill the practical experience requirement for each category.
- B.** An applicant for a qualifying party license shall submit the following information to the Commission on a form obtained from the Commission:
 1. Full name;
 2. Applicator license number;
 3. Qualifying party license number, if any;
 4. Physical address;
 5. Mailing address, if different from the physical address;
 6. Telephone number;
 7. Electronic mail address, if any;
 8. Date of birth;
 9. Social Security number;
 10. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, submit:
 - a. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status; and
 - b. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 11. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 12. Name of employer, if any;
 13. Employer's business license number, if applicable;
 14. Employer's telephone number, if applicable;
 15. License category for which application is made; and
 16. The applicant's dated signature affirming that the information provided is true and correct.
- C.** In addition to the form required under subsection (B), an applicant shall submit:
 1. The fee specified in R4-29-105;
 2. Evidence of the hours of practical experience required under A.R.S. § 32-2314(C)(2) in each category for which the applicant seeks licensure. Evidence that is acceptable to the Commission includes:
 - a. A completed Verification of Practical Experience form that is signed by a business or qualifying party licensee or another person with first-hand knowledge of the applicant's experience and notarized;
 - b. Payroll records, invoices, route sheets, or calendars;
 - c. Letters from persons with first-hand knowledge of the applicant's experience; and
 - d. An official transcript from an educational institution at which the applicant completed relevant course work;
 3. A complete set of fingerprints; and
 4. The fingerprint processing fee.
- D.** The Commission shall send a written notice to an applicant for a qualifying party license regarding the date and time that the applicant is to appear at a Commission meeting for an evaluation of the applicant's practical experience and to be authorized to schedule and take the licensing examination described under R4-29-205. The applicant shall appear as noticed.
- E.** The Commission shall issue an inactive license to an applicant who meets all of the qualifications in A.R.S. § 32-2314 and this Chapter and passes the licensing examination. Before working as the qualifying party of a licensed business, the lic-

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ensee shall activate the license.

- F. An active qualifying party license authorizes the licensee to qualify one licensed business until December 31. A qualifying party licensee may qualify the one licensed business in each category in which the qualifying party is licensed.
- G. If a qualifying party applicant whose application is closed under R4-29-107(B)(3) or (C) submits a new application under subsections (B) and (C) within one year after the prior application closed, the Commission shall not require the applicant to appear before the Commission as described in subsection (D) unless the applicant was convicted of a felony or misdemeanor during the time between applications.

R4-29-205. ~~Repealed~~ Licensing Examination for an Applicator or Qualifying Party Applicant

- A. Under A.R.S. §§ 32-2312(C) and 32-2314(C), taking and passing an examination is a condition for licensure as an applicator or qualifying party.
- B. An applicant who has received notice from the Commission that the applicant is approved to take the licensing examination shall make arrangements to take the examination by contacting the Commission or the examination service or testing vendor with which the Commission has contracted.
- C. To assist an applicant to prepare for the licensing examination, the Commission shall maintain a list of study materials on its web site and may provide an examination training class. An applicant may also take an examination training class from a private vendor.
- D. The licensing examination measures knowledge and understanding of both general and category-specific information. To be licensed, an applicant shall score at least 75 percent on the general standards (“core”) examination and the category-specific examination for each category in which the applicant seeks licensure.
- E. Both the core and category-specific licensing examination for an applicator and qualifying party measure knowledge and understanding of the following content areas:
 - 1. Pesticide label and labeling and pesticide types and formulations;
 - 2. Pest identification, life cycles, and habits;
 - 3. Safety and environmental factors relating to the use, handling, and disposal of pesticides;
 - 4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and
 - 5. Laws and rules.
- F. The Commission or the examination service or testing vendor shall provide immediate, written notice to an applicant regarding whether the applicant passed a licensing examination.
- G. An applicant shall not take the same examination more than once on the same day.
- H. The Commission shall immediately close the application of an applicant that the Commission determines cheated on an examination.
- I. If an application is closed under subsection (H), the score received on the examination is void.

R4-29-206. ~~Repealed~~ Obtaining a Business License

- A. An applicant for a business license to conduct pest management services shall submit the following information to the Commission on a form obtained from the Commission:
 - 1. About the qualifying party who will qualify the business:
 - a. Full name;
 - b. Physical address;
 - c. Mailing address, if different from the physical address;
 - d. Electronic mail address, if any;
 - e. Date of birth;
 - f. Social Security number;
 - g. Telephone number;
 - h. Qualifying party license number and applicator license number, if any;
 - i. License category of qualification; and
 - j. The dated signature of the qualifying party;
 - 2. About the business license applicant:
 - a. Full name;
 - b. Mailing address;
 - c. Electronic mail address, if any;
 - d. Telephone number;
 - e. Date of birth; and
 - f. Social Security number;
 - 3. About the business:
 - a. Business name;
 - b. Form of business organization and names of the following persons authorized to act on behalf of the business:
 - i. Owner if a sole proprietorship;

- ii. Managing or general partner if a partnership;
 - iii. President, secretary, and statutory agent if a corporation;
 - iv. Manager or at least two members if a limited liability company;
 - v. Designated agent of an appointed or elected person or body if the state or a political subdivision; or
 - vi. Person authorized to make decisions for the business if any other type of business form;
 - c. Telephone number;
 - d. Fax number;
 - e. Physical address;
 - f. Mailing address, if different from physical address; and
 - g. Chemical storage address; and
 - 4. The business applicant's dated signature affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit:
- 1. The fee specified in R4-29-105;
 - 2. A completed Business License Application Supplement that includes the following information about the pest management business:
 - a. A description of how the qualifying party will manage the business;
 - b. A description of how the qualifying party will supervise the pest management services provided by the business;
 - c. A description of plans to provide training for all licensed applicators employed by the business;
 - d. A description of how the business will comply with the financial responsibility requirements in A.R.S. § 32-2313;
 - e. The names of all individuals who own at least 10% of the business;
 - f. The name of the statutory agent of the business; and
 - g. If a corporation, the names of all corporate officers;
 - 3. The following information on a completed Commission insurance certificate if the applicant will fulfill the financial responsibility requirements by purchasing liability insurance or a surety bond:
 - a. Name, address, and telephone number of the insured;
 - b. Existing business licenses held by the applicant;
 - c. Name, address, and telephone number of the insurer;
 - d. Name, address, and telephone number of the insurance producer or broker;
 - e. Number of the insurance policy or surety bond, effective and expiration dates, limits, and deductible, if any;
 - f. The categories of work covered by the insurance or bond; and
 - g. The dated signature and title of an agent of the insurer or producer or broker certifying that:
 - i. The company is authorized by the Arizona Department of Insurance to do business in Arizona;
 - ii. The insurance or bond has been issued to the insured for the period indicated;
 - iii. The insurance or bond complies with the Commission's statutes regarding coverage endorsements;
 - iv. The company will notify the Commission in writing within 30 days if the insurance or bond is cancelled, revoked, or falls below the legal limit or if the deductible exceeds \$10,000; and
 - v. The company will furnish information regarding the insurance or bond to the Commission upon request; and
 - 4. A copy of the Articles of Incorporation, trade name certificate, partnership agreement, or other evidence of the form of business organization.
- C.** The Commission shall deny use of a business license name that the Commission determines is similar to an existing business name and may cause a reasonable person to confuse the two businesses.
- D.** If the Commission determines there may be cause to deny a license to an applicant, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.
- E.** The Commission shall issue a business license to an applicant that the Commission determines is qualified under A.R.S. § 32-2313 and this Chapter. The business license, which is valid until December 31, authorizes the licensee to operate a structural pest control business in each category in which the licensee employs a qualifying party licensed in the category.

R4-29-207. ~~Repealed~~ Renewing an Applicator, Qualifying Party, or Business License

- A.** The Commission shall mail a renewal form to a licensee at the licensee's address of record, provide access to a downloadable renewal form, or provide access to online renewal. Timely license renewal is the responsibility of the licensee. Failure to receive notice of renewal does not justify failure to renew.
- B.** If a licensee's renewal application is not administratively complete before the license expiration date, the Commission shall require the licensee to pay the penalty prescribed at R4-29-105(B).
- C.** Renewal applications are due as follows:
- 1. For an applicator license, May 1;
 - 2. For a qualifying party license, December 1; and
 - 3. For a business license, December 1.

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- D.** To renew an applicator or qualifying party license, the licensee shall:
1. Submit the following information to the Commission on a completed renewal form:
 - a. A change in mailing address, if any;
 - b. Electronic mail address, if any;
 - c. Telephone number;
 - d. For a qualifying party, a statement whether the licensee wants to renew or inactivate each category in which the licensee is licensed. An applicator license cannot be inactivated by category but only in whole;
 - e. Name of employer;
 - f. Name of business for which the qualifying party provides qualification;
 - g. A statement whether the licensee has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all felony convictions has been reviewed and voted on by the Commission and if the answer is no:
 - i. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - ii. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - iii. A complete set of fingerprints; and
 - iv. The fee for fingerprint processing;
 - h. A statement whether the licensee has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and
 - i. The licensee's dated signature affirming that the licensee complied with the continuing education requirement under R4-29-215. If the licensee is renewing a license in inactive status, no continuing education is required; and
 2. Submit the fee required under R4-29-105.
- E.** To renew a business license, the licensee shall:
1. Submit the following information to the Commission on a completed renewal form:
 - a. A change in mailing address, if any;
 - b. Electronic mail address, if any;
 - c. Telephone number;
 - d. A statement whether the licensee wants to renew an active or inactive license;
 - e. Name of the qualifying party in each category in which the business provides structural pest control services;
 - f. A statement that the licensee maintains the insurance or surety bond required by A.R.S. § 32-2313; and
 - g. The dated signature of the authorized representative of the business; and
 2. Submit the fee required under R4-29-105.
- F.** If the Commission determines there may be cause to deny a renewal, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.
- G.** An applicator, qualifying party, or business licensee that fails to submit a timely and complete renewal application shall not provide pest management services until the Commission provides written notice of the Commission's decision to grant or deny renewal.
- H.** The Commission shall not renew a license that is expired for more than 30 days. The former licensee may apply for licensure as a new applicant.

R4-29-208. ~~Repealed~~ Obtaining a Temporary Qualifying Party License

- A.** A licensed applicator who is employed by a business licensee may apply for a renewable, temporary qualifying party license if the qualifying party, who is not a temporary qualifying party, of the business has disassociated from the business within the last 45 days.
- B.** A temporary qualifying party applicant shall submit the following information to the Commission on a form obtained from the Commission:
1. About the business licensee:
 - a. Business name;
 - b. Business license number;
 - c. Physical address;
 - d. Mailing address, if different from the physical address;
 - e. Telephone number; and
 - f. Fax number;
 2. About the licensed applicator:
 - a. Full name;
 - b. Applicator license number;
 - c. Physical address;

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- d. Mailing address, if different from the physical address;
 - e. Telephone number;
 - f. Electronic mail address, if any;
 - g. Fax number;
 - h. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all felony convictions has been reviewed and voted on by the Commission and if the answer is no:
 - i. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - ii. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - iii. A complete set of fingerprints; and
 - iv. The fee for fingerprint processing;
 - i. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 - j. License category for which application is made; and
 - k. The applicant's dated signature affirming that the information provided is true and correct.
- C.** In addition to the form required under subsection (B), an applicant shall submit:
- 1. The fee specified in R4-29-105;
 - 2. A written notice of disassociation from the qualifying party who previously qualified the business;
 - 3. A written request from the business licensee that an applicator licensed in the category in which the disassociating qualifying party qualified the business be granted a temporary qualifying party license. The Commission shall not issue a temporary qualifying party license to an applicator to qualify a business in a category different from the category in which the disassociating qualifying party qualified the business;
 - 4. A written statement from the business licensee that the business has not operated since the disassociation in the category for which the disassociated qualifying party qualified the business; and
 - 5. A written description of how the temporary qualifying party will:
 - a. Manage the pest management services provided by the business,
 - b. Supervise the pest management services provided by the business, and
 - c. Train and supervise all licensed and unlicensed applicators employed by the business.
- D.** The Commission shall issue a temporary qualifying party license to an applicant who is qualified under A.R.S. § 32-2314 and this Chapter. The temporary qualifying party license authorizes the licensee to qualify a licensed business for 60 days in each category in which the temporary qualifying party is licensed.
- E.** If a temporary qualifying party license expires, the business licensee qualified by the temporary qualifying party licensee shall not perform pest management services in the category for which the temporary qualifying party qualified the business.

R4-29-209. ~~Renewing~~ Renewing a Temporary Qualifying Party License

The Commission shall renew a temporary qualifying party license for an additional 60 days if the business licensee submits the fee required under R4-29-105 and:

- 1. The business licensee submits to the Commission a written request for renewal explaining why renewal is needed and the business licensee's contingency plan if the Commission denies renewal; and
- 2. As required by A.R.S. § 32-2314(F), the business licensee establishes good cause for delay in hiring a qualifying party licensee. The business licensee can establish good cause by showing:
 - a. The temporary qualifying party licensee or another licensed applicator of the business licensee has applied for a qualifying party license and has the practical experience required for licensure but:
 - i. The Commission has yet to receive the results of the background investigation;
 - ii. The qualifying party applicant has taken but not passed the core and category-specific licensing examination; or
 - iii. The qualifying party applicant completed all requirements to obtain a license, but the Commission was unable to schedule consideration of the qualifying party applicant before the temporary qualifying party license expired;
 - b. The business licensee conducted a diligent but unsuccessful search for a qualifying party; or
 - c. Fewer than six months have elapsed since the qualifying party who qualified the business disassociated from the business.

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R4-29-210. ~~Expired~~ Inactivating or Activating an Applicator License

A. To place a valid, active applicator license on inactive status, the licensee shall submit the following information to the Commission on a form obtained from the Commission:

1. Name;
2. Applicator license number;
3. Physical address;
4. Mailing address, if different from the physical address;
5. Electronic mail address, if any;
6. Date of birth;
7. Social Security number;
8. Telephone number; and
9. Dated signature of the licensee affirming that:

- a. The information provided is true and correct; and
- b. The licensee shall not perform pest management services in any category while the license is on inactive status.

B. An inactive license expires on May 31 unless renewed. To renew an inactive license, the licensee shall comply with the renewal provisions at R4-29-207(C) and (D). There is no continuing education requirement to renew an inactive applicator license.

C. To activate an inactive applicator license, the licensee shall submit to the Commission:

1. The following information on a form obtained from the Commission:
 - a. Name;
 - b. Applicator license number;
 - c. Categories in which the licensee is licensed;
 - d. Physical address;
 - e. Mailing address, if different from the physical address;
 - f. Electronic mail address, if any;
 - g. Date of birth;
 - h. Social Security number;
 - i. Telephone number;
 - j. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all convictions have been reviewed by the Commission and if the answer is no, submit:
 - i. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - ii. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - iii. A complete set of fingerprints; and
 - iv. The fee for fingerprint processing;
 - k. A statement whether the applicant has ever had a license or permit to practice structural pest control denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 - l. Name of employer;
 - m. Employer's business license number;
 - n. Employer's telephone number; and
 - o. Dated signature of the licensee affirming that the information provided is true and correct;
2. The fee required under R4-29-105; and
3. Evidence described at R4-29-215(C) of completing six units of continuing education.

D. If the Commission determines there may be cause to deny activating an applicator license, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.

R4-29-211. ~~Repealed~~ Inactivating or Activating a Qualifying Party License

A. To place a valid, active qualifying party license on inactive status, the licensee shall submit the following information to the Commission on a form obtained from the Commission:

1. Name;
2. Qualifying party license number;
3. Physical address;
4. Mailing address, if different from the physical address;
5. Electronic mail address;
6. Date of birth;
7. Social Security number;

8. Telephone number;
 9. The license categories to be inactivated;
 10. Employer's name and telephone number; and
 11. Dated signature of the licensee affirming that:
 - a. The information provided is true and correct; and
 - b. The licensee shall not act to qualify a business in an inactive category without activating the license in that category.
- B.** An inactive qualifying party license expires on December 31 unless renewed. To renew an inactive license, the licensee shall comply with the renewal provisions at R4-29-207(C) and (D). There is no continuing education requirement to renew an inactive qualifying party license.
- C.** To activate an inactive qualifying party license and qualify a new business, the qualifying party licensee and the new business applicant shall:
1. Comply with R4-29-206.
 2. Submit both the fee required to activate a qualifying party license and apply for a business license, and
 3. Submit evidence described at R4-29-215(C) of the qualifying party completing six units of continuing education.
- D.** To activate an inactive qualifying party license and qualify an existing business, the qualifying party licensee and the business licensee shall:
1. Comply with R4-29-206.
 2. Submit the fee required to activate a qualifying party license, and
 3. Submit evidence described at R4-29-215(C) of the qualifying party completing six units of continuing education.
- E.** If the Commission determines there may be cause to deny activating a qualifying party license, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.

R4-29-212. ~~Repealed~~ Broadening an Applicator or Qualifying Party License

- A.** To broaden an applicator license, the licensed applicator shall:
1. Submit to the Commission the license application form described in R4-29-203 and indicate on the form the category in which broadening is sought.
 2. Submit the fee required under R4-29-105(A)(1)(b), and
 3. Take and pass the licensing examination described in R4-29-205 for the specific category in which broadening is sought.
- B.** A qualifying party is eligible to broaden the qualifying party license only if the qualifying party holds an applicator license in the category in which broadening is sought.
- C.** To broaden a qualifying party license, the licensed qualifying party shall:
1. Submit to the Commission the license application form described in R4-29-204 and indicate on the form the category in which broadening is sought.
 2. Submit the fee required under R4-29-105(A)(2)(b).
 3. Submit the evidence required under R4-29-204(C)(2) for the category in which broadening is sought.
 4. Appear at a Commission meeting for an evaluation of the qualifying party's practical experience for the category in which broadening is sought, and
 5. Take and pass the licensing examination described in R4-29-205 for the specific category in which broadening is sought.
- D.** If a qualifying party whose application for license broadening is closed under R4-29-107(B)(3) or (C) submits a new application under subsection (C) within one year after the prior application closed, the Commission shall not require the applicant to appear before the Commission as described in subsection (C)(4) unless the applicant was convicted of a felony or misdemeanor during the time between applications.

R4-29-213. ~~Repealed~~ Branch Office Registration

- A.** A business licensee that wishes to do business from a branch office shall register the branch office with the Commission before doing any business from the branch office.
- B.** To register a branch office, the business licensee shall complete a form, that is available on the Commission's web site, and provide the following information:
1. About the business:
 - a. Name;
 - b. License number;
 - c. Telephone and fax numbers;
 - d. Physical address;
 - e. Mailing address, if different from physical address; and
 - f. Electronic mail address, if any;

from the continuing education provider that includes:

1. The applicator's or qualifying party's name;
 2. The applicator's or qualifying party's license number;
 3. The name of the continuing education;
 4. The name of the continuing education provider;
 5. The date of the continuing education; and
 6. The number of continuing education units obtained.
- D.** An applicator and qualifying party shall maintain a certificate of attendance for one year and make certificates of attendance at a continuing education available for review by the Commission upon request.
- E.** An applicator or qualifying party may earn one unit of continuing education each year for attending a regularly scheduled meeting of the Commission in its entirety. To ensure receipt of a certificate of attendance, an applicator or qualifying party shall contact the Commission staff before attending a Commission meeting and sign the meeting sign-in sheet.
- F.** An applicator or qualifying party who teaches a continuing education may earn one unit of continuing education for each hour taught, not more than once during a calendar year.

R4-29-216. Requirements for Approval of Continuing Education

- A.** Only continuing education approved by the Commission may be used to satisfy the continuing education requirement in R4-29-215. The Commission shall approve a continuing education only if it addresses:
1. Pesticide labels and labeling;
 2. Safety, environmental factors, and consequences;
 3. Pesticide use and disposal;
 4. Laws and rules related to pest management and the business of pest management;
 5. Application techniques;
 6. Calibration and dilution;
 7. Equipment;
 8. Pest identification;
 9. Life cycles and habits;
 10. Calculation and measurements; or
 11. Licensee responsibilities.
- B.** An applicator, qualifying party, or continuing education provider may apply to the Commission for approval of continuing education.
- C.** A person applying for approval of continuing education shall submit the following to the Commission:
1. A continuing education approval application form, obtained from the Commission, that provides the following information:
 - a. Type of continuing education;
 - b. Name of continuing education provider;
 - c. Address and telephone number of continuing education provider;
 - d. Topic of continuing education;
 - e. Pest management category of continuing education;
 - f. Date, time, and location of the continuing education, if known at the time of the application. If this information is not known at the time of application, the person applying for approval of the continuing education shall submit this information when it is known;
 - g. Number of continuing education units;
 - h. Previous continuing education number, if any;
 - i. Level and type of instruction;
 - j. Description of learning activities;
 - k. Frequency at which the continuing education will be offered;
 - l. Method of proof of attendance in addition to online reporting; and
 - m. Dated signature of applicant;
 2. An instructor application or resume that includes information about the instructor's education and experience relevant to pest management;
 3. An outline of the subject matter to be covered in the continuing education that demonstrates the continuing education will address at least one of the topics identified in subsection (A);
 4. A copy of any material that will be used or provided to those who attend;
 5. A copy of an examination, if any, used to measure learning; and
 6. A copy of promotional materials, if any.
- D.** The provider of an approved continuing education shall:
1. Provide a certificate of attendance that meets the requirements of R4-29-215(C) to each individual who completes the continuing education;

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2. Enter attendance information using the Commission's online continuing education reporting tool within 10 days after the date of the continuing education; and
 3. Maintain a copy of the certificates of attendance or the original sign-in sheet that lists the attendees' names and license numbers for two years.
- E.** Unless otherwise indicated in the notice of approval, the Commission's approval of a continuing education is valid for two years.
- F.** Approval of a continuing education is not renewable. To reapply for approval of a continuing education, a person shall comply with the requirements of subsection (C).
- G.** The provider of an approved continuing education shall provide notice and updated information to the Commission within 10 days after the subject matter or instructor of the approved continuing education changes.
- H.** To evaluate the effectiveness of a continuing education, the Commission may monitor an approved continuing education. Upon request by the Commission, a continuing education provider shall provide the Commission with the date and time that approved continuing education will be provided.
- I.** The Commission shall revoke its approval of continuing education if the Commission determines that the continuing education fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the Commission's statutes and this Chapter.

ARTICLE 3. ~~REPEALED~~ APPLICATOR DUTIES AND RESPONSIBILITIES

R4-29-301. ~~Repealed~~ Compliance with Commission Monitoring

- A.** For the purpose of monitoring the provision pest management services, the Commission may make a written request of an applicator for a list of the time and location of pest management services that the applicator is scheduled to provide on a specified date that is at least 24 hours from the time of the request.
- B.** The applicator from whom information is requested under subsection (A) shall make the information available to the Commission within 24 hours after the request is made. The applicator may make the information available at the Commission office by hand delivery or fax or at another location acceptable to the Commission.
- C.** If an applicator cannot timely comply with a request made under subsection (A), the applicator shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- D.** The Commission shall:
1. Modify the request made under subsection (A) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 2. Provide additional time to respond to the request made under subsection (A) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- E.** Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

R4-29-302. ~~Repealed~~ Providing Notice to Customers

- A.** An applicator shall provide a written notice to a customer for whom the applicator provides a pest management service that:
1. Identifies the pesticide used;
 2. Provides all information required by the label or labeling;
 3. Provides all information required by local ordinance; and
 4. Includes the following statement printed in at least an eight-point font: "Warning—Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated, or aerated. For more information, contact [business licensee's name and business license number issued by the Commission] at [business licensee's telephone number]."
- B.** An applicator who provides a pest management service at a school shall comply with the notification requirements in A.R.S. § 32-2307.

R4-29-303. ~~Repealed~~ Performing a Wood-destroying Insect Inspection

- A.** Only an applicator with a category B-2 or B-8 license who has received the training required under A.R.S. § 32-2324(A) may perform a wood-destroying insect inspection.
- B.** An applicator performing a wood-destroying insect inspection shall inspect all areas of a structure that are visible or accessible at the time of the inspection. The applicator shall use a flashlight to inspect dark spaces and a ladder to access areas that cannot be seen from the ground.
- C.** An applicator performing a wood-destroying insect inspection may exclude from inspection an area that is permanently covered by a floor covering, wall covering, or built-in appurtenance such as a bookcase, cabinet, appliance, equipment, or furniture or that would require removing or marring finish work or moving furniture, appliances, or equipment. The appli-

cator shall note on the WDIIR all areas that are not inspected and the reason the areas are not inspected.

- D.** An applicator performing a wood-destroying insect inspection shall inspect all areas where there is evidence of current or previous infestation and where a condition conducive to infestation exists. A condition conducive to infestation includes:
1. Faulty grade level. If a structure contains a slab or floor that is on or near grade, the existing earth level is considered grade level;
 2. Inaccessible sub-area such as an area with less than 18 inches of clear space between the bottom of a floor joist and grade level;
 3. Excessive cellulose debris. Cellulose debris is excessive when:
 - a. The debris can be raked into a pile of at least one cubic foot;
 - b. A stump or wood imbedded in a footing of the structure is in contact with earth, or
 - c. Firewood or a lumber pile is within six inches of the structure;
 4. Earth-to-wood contact, which involves wood that is part of a structure or that is attached to or securely abuts the structure and is in contact with the ground;
 5. Excessive moisture or evidence of a moisture condition in or around a structure; or
 6. Insufficient ventilation. Ventilation is insufficient when there are fewer than two areas to permit cross ventilation and prevent excessive moisture.
- E.** To verify whether a corrective treatment was performed or a condition conducive to infestation was corrected, an applicator may conduct a supplemental inspection within 30 days after an original inspection. An inspection conducted more than 30 days after an original inspection is not a supplemental inspection.

R4-29-304. ~~Repealed~~ Using Pesticides and Devices

- A.** An applicator shall use only a pesticide that is currently registered for use by both the EPA and the Arizona Department of Agriculture.
- B.** An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:
1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;
 2. Provides a pest management service or handles a pesticide without wearing clothing and using equipment that protects the applicator from pesticide exposure;
 3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicator, animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
 4. Uses a pesticide in a food-handling establishment that the label and labeling do not indicate is safe to use in a food-handling establishment; and
 5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.
- C.** While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a spray tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the spray tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the spray tank fill opening and that the fill opening is equipped with an effective anti-siphoning device.
- D.** An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.
- E.** An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted-use only if the applicator is licensed, or working under the immediate supervision of a licensee licensed, in the category for which the restricted-use pesticide is applicable.
- F.** Unless consistent with the label and labeling, an applicator shall not apply a granulated pesticide that bears the statement "Keep out of the reach of children" in a manner that leaves exposed granules on a patio, step, porch, sidewalk, driveway, or floor.
- G.** An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.
- H.** An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the Arizona Department of Agriculture and the pesticide labeling only if the applicator has both the Special Local Need registration and labeling in the applicator's possession at the time of application.
- I.** If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the Commission's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.
- J.** If there is a conflict between any provision in this Section and labeling instructions or a local ordinance, an applicator shall follow the more specific instruction.

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R4-29-305. ~~Repealed Performing Wood-destroying Insect Control~~

- A.** An applicator shall not perform wood-destroying insect control or fumigation unless the applicator is licensed in Category B2 or B4, respectively, or working under the immediate supervision of a supervising applicator or qualifying party who is licensed in Category B2 or B4, respectively.
- B.** An applicator shall not perform wood-destroying insect control until the business licensee that employs the applicator ensures that:
1. A wood-destroying insect inspection is performed under R4-29-303 by a licensed applicator qualified under A.R.S. § 32-2323(E).
 2. A treatment proposal is prepared on a form approved by the Commission and contains the information required under A.R.S. § 32-2323(B) and (C), and
 3. The treatment proposal is delivered to the person requesting the proposal.
- C.** An applicator shall apply a termiticide only in the quantity, strength, and dosage, and in the manner prescribed on the termiticide label unless otherwise specified by this Chapter or a Commission order.
- D.** Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator shall:
 - a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
 - b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - i. A penetration or protrusion through the slab;
 - ii. An observable preset for crack or joint control;
 - iii. A formed-up change of grade level;
 - iv. Abutting slabs;
 - v. A bath trap or tear-out;
 - vi. The interior of a foundation or stem wall; or
 - vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
 2. Except as specified in subsection (D)(3) and unless the termiticide label requires more, an applicator shall treat all critical areas during a pretreatment, including the final-grade portion of a pretreatment, at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot.
 3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
 - a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
 - b. Access to the footer is not possible because of its distance below grade; or
 - c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
 4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
 - a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
 - b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
 - i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by treating beyond a depth of four feet.
 - ii. A photograph of the site after the pretreatment but before concrete placement.
 - iii. A written statement from the general contractor concerning the fill material and compaction rating.
 - iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
 - v. A written compaction rating statement from the engineering subcontractor.
 5. If an applicator is advised that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken before concrete is poured, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.
 6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
 - a. Name of business licensee;
 - b. Address of business licensee;
 - c. Telephone number of business licensee;
 - d. License number of business licensee;

- e. Location or address of project;
 - f. Date of pretreatment application;
 - g. Time that application was started (not time that applicator arrived at the site);
 - h. Time that application ended (not time that applicator left the site);
 - i. Trade name of pesticide used;
 - j. Percentage of active ingredient in the pesticide used;
 - k. Number of gallons of chemical preparation applied;
 - l. Square footage of area treated;
 - m. Linear footage of area treated;
 - n. Type of slab construction;
 - o. Name of applicator; and
 - p. License number of applicator or, if not licensed, the name and license number of the supervising applicator or qualifying party providing immediate supervision.
7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."
8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."
9. An applicator shall leave a record of the final-grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final-grade treatment contains the information listed in subsection (D)(6) except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.
- E.** New-construction treatment for commercial or residential construction.
1. Unless specifically precluded by the termiticide label, an applicator shall treat all critical areas visible at the time of a new-construction treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
- a. A penetration or protrusion through the slab;
 - b. An observable crack or joint;
 - c. Abutting slabs;
 - d. A bath trap or tear-out;
 - e. The interior of a foundation or stem wall; or
 - f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of 4 gallons of chemical preparation per 10 linear feet for each foot of depth.
3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection (D)(6).
5. An applicator shall comply with subsections (D)(7) through (D)(9) when performing a new-construction treatment.
- F.** Post-construction treatment for commercial or residential construction.
1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
2. If the critical areas of a structure received neither a pretreatment nor a new-construction treatment, an applicator shall treat all critical areas visible at the time of post-construction treatment before issuing a builder's warranty regarding subterranean termite treatment. An area is critical at the time of a post-construction treatment if it is an area listed in subsection (D)(1)(b), a change of grade, or a crack greater than 1/16th of an inch.
3. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.
- G.** An applicator who performs a pretreatment or new-construction treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) is provided to the business licensee for inclusion in the business licensee's service records.

R4-29-306. ~~Repealed~~ Storing and Disposing of Pesticides and Devices

- A.** An applicator shall store and dispose of a pesticide or device in a manner consistent with its label and labeling.

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- B. An applicator shall store a pesticide in a closed container that is free from corrosion, leakage, or pesticide contamination and properly labeled.
- C. An applicator shall ensure that a service container bears a durable and legible label with the following information:
 - 1. The name, address, and telephone number of the business licensee;
 - 2. The common chemical or trade name of the principal active ingredients;
 - 3. The EPA registration number;
 - 4. The strength of the concentrate or dilution expressed as a percentage of active ingredients;
 - 5. Any signal word required on the label; and
 - 6. The phrase "KEEP OUT OF REACH OF CHILDREN."
- D. An applicator shall not place words or markings on a service container or on the label affixed to the service container that are unrelated to the pesticide in the service container, except for markings related to a method of tracking the product.
- E. If the label affixed to a pesticide container becomes lost or damaged, an applicator shall attach an approved specimen label to the pesticide container.
- F. An applicator shall replace a damaged container, other than a fumigant container, with an identically labeled container or a properly labeled service container.
- G. Application equipment from which a pesticide is directly discharged and in which the pesticide is not stored is not subject to the labeling requirements of this Section.
- H. An applicator shall not store a pesticide in the same room or common air space where food, beverage, feed, drugs, cosmetics, eating utensils, or tobacco products are stored.
- I. An applicator shall not store a pesticide in a container that was used for food, beverage, feed, drugs, or cosmetics, or which by size, shape, or marking could be confused as being a food, beverage, feed, drug, or cosmetic.
- J. An applicator shall not store a fumigant within a residential structure.
- K. An applicator shall ensure that a pesticide in an original or service container, an empty pesticide container that has not been prepared for disposal in accordance with its label, or a returnable or reusable pesticide container is kept in a locked storage space when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.
- L. An applicator shall not leave a pesticide, including a pesticide in portable application equipment such as a spray tank, in a truck bed where it is accessible to others.
- M. To prevent damage during transit, an applicator shall ensure that a pesticide container is in a locked storage space while the pesticide container is transported on a service vehicle.

R4-29-307. ~~Repeated~~ Applicator Recordkeeping

- A. An applicator shall timely make all records required by law and provide the records to the business licensee that employs the applicator. Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disciplinary action.
- B. Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
 - 1. Name and address of the customer;
 - 2. Specific site at which the pest management service was provided;
 - 3. Date of service;
 - 4. Target pest or purpose of service;
 - 5. Trade name or common name of pesticide applied;
 - 6. EPA registration number of any restricted use pesticide applied;
 - 7. Percent active ingredient in the pesticide as applied;
 - 8. Amount of pesticide applied; and
 - 9. Name and license number of the applicator or if the applicator is unlicensed, name of the unlicensed applicator and the name and license number of the supervising applicator.
- C. Pesticide purchase records. An applicator shall make a record of each pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
 - 1. Date of purchase or acquisition;
 - 2. Trade name or common name of pesticide;
 - 3. EPA registration number of pesticide;
 - 4. Quantity of pesticide purchased or acquired;
 - 5. Whether the pesticide is for general or restricted use; and
 - 6. Name and license number of the applicator or if the applicator is unlicensed, name of the unlicensed applicator and the name and license number of the supervising applicator.
- D. Pesticide disposal records. An applicator shall make a record of each pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
 - 1. Date of disposal;

2. Trade name or common name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide disposed;
 5. Whether the pesticide is for general or restricted use. If the disposed pesticide is restricted use, the applicator shall include the following information in the record of pesticide disposal:
 - a. Name of the active ingredient in the pesticide disposed;
 - b. Percent active ingredient in the pesticide disposed;
 - c. Method of disposal, and
 - d. Location and type of disposal site or service; and
 6. Name and license number of the applicator or if the applicator is unlicensed, name of the unlicensed applicator and the name and license number of the supervising applicator.
- E.** WDIIR. An applicator who completes a wood-destroying insect inspection shall:
1. Complete a WDIIR, using a form approved by the Commission. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the Commission-approved form;
 2. Submit an original WDIIR to the business licensee within seven days after completing the wood-destroying insect inspection;
 3. Submit a supplemental WDIIR to the business licensee within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;
 4. If required by another state or federal agency, complete another WDIIR in addition to but not instead of the Commission-approved WDIIR; and
 5. Ensure that the following information is included on the WDIIR:
 - a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
 - b. VA, HUD, or FHA case number, if applicable;
 - c. Date of wood-destroying insect inspection, and the WDIIR number;
 - d. Purpose of the inspection report;
 - e. Whether the report is from an original or supplemental inspection;
 - f. Name of property owner or seller;
 - g. Address of inspected property;
 - h. Inspected and un-inspected structures at the site;
 - i. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
 - j. Whether visible evidence of wood-destroying insects is observed;
 - k. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on which a proper control measure is performed, if applicable;
 - l. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
 - m. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
 - n. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
 - o. Visible conditions conducive to infestation by wood-destroying insects;
 - p. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, inaccessible areas, and areas where further inspection is recommended;
 - q. Dated signature of the property owner or purchaser; and
 - r. Dated signature and license number of the individual making the inspection. The individual making the inspection shall sign the WDIIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.
- F.** Wood-destroying insect treatment proposal. An applicator who is qualified under A.R.S. § 32-2323(B) and (E) shall complete a wood-destroying insect treatment proposal using a form approved by the Commission and provide a copy of the proposal to the person requesting the proposal and the business licensee.
- G.** Upon written request by the Commission, an applicator shall make the records required under this Section available for review by the Commission. The applicator from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The applicator shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The applicator shall be available to interpret the submitted records if requested by the Commission.
- H.** If an applicator cannot timely comply with a request made under subsection (G), the applicator shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

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- I. The Commission shall:
 - 1. Modify the request made under subsection (G) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 - 2. Provide additional time to respond to the request made under subsection (G) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- J. Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

ARTICLE 4. ~~REPEALED~~ SUPERVISING APPLICATOR DUTIES AND RESPONSIBILITIES

R4-29-401. ~~Repealed~~ Compliance with Applicator Duties and Responsibilities

A supervising applicator shall comply with every provision in Article 3 regarding applicator duties and responsibilities.

R4-29-402. ~~Repealed~~ Supervising an Applicator

- A. A supervising applicator shall ensure that every applicator, whether licensed or unlicensed, is trained and equipped to comply with all of the duties and responsibilities required under the Commission's statutes, this Chapter, and label and labeling directions.
- B. A supervising applicator shall provide the supervision necessary for an applicator, whether licensed or unlicensed, to comply with all of the duties and responsibilities required under the Commission's statutes, this Chapter, and label and labeling directions.
- C. A supervising applicator who supervises the use, application, storage, or disposal of a pesticide shall be licensed in the category applicable to the pesticide being used, applied, stored, or disposed.
- D. A supervising applicator shall not allow an unlicensed applicator to provide pest management services more than 90 days of employment. A supervising applicator shall not allow a licensed applicator to provide pest management services in a category for which the applicator is not licensed for more than 30 days.
- E. A supervising applicator shall provide immediate supervision, which requires the supervising applicator to be physically present, when an unlicensed applicator applies a pesticide for wood-destroying insect control, provides a fumigation service, or applies a restricted-use pesticide. A supervising applicator shall provide immediate supervision to only one unlicensed applicator at a time.
- F. In circumstances other than those described in subsection (E), a supervising applicator shall provide direct supervision, which does not require the supervising applicator to be physically present. When providing direct supervision, a supervising applicator shall consider the potential danger to the public or environment if the unlicensed applicator misuses a pesticide. A supervising applicator providing direct supervision shall instruct the unlicensed applicator in the following areas and have written evidence that the instruction was provided and understood:
 - 1. Proper loading, mixing, applying, storing, and disposing of the pesticide;
 - 2. Use of required safety equipment; and
 - 3. Method and means by which to contact the supervising applicator immediately.

R4-29-403. ~~Expired~~ Supervising Applicator Recordkeeping

- A. In addition to making the records required under R4-29-307, a supervising applicator shall make records of the training, supervision, and equipping provided by the supervising applicator and shall provide the records to the business licensee that employs the supervising applicator. Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disciplinary action.
- B. Upon written request by the Commission, a supervising applicator shall make the records required under this Section available for review by the Commission. The supervising applicator from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The supervising applicator shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The supervising applicator shall be available to interpret the submitted records if requested by the Commission.
- C. If a supervising applicator cannot timely comply with a request made under subsection (B), the supervising applicator shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- D. The Commission shall:
 - 1. Modify the request made under subsection (B) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 - 2. Provide additional time to respond to the request made under subsection (B) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- E. Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

ARTICLE 5. ~~REPEALED~~ QUALIFYING PARTY DUTIES AND RESPONSIBILITIES

R4-29-501. ~~Repealed Compliance with Applicator Duties and Responsibilities~~

A qualifying party shall comply with every provision in Article 3 regarding applicator duties and responsibilities.

R4-29-502. ~~Repealed Compliance with Supervising Applicator Duties and Responsibilities~~

A qualifying party shall comply with every provision in Article 4 regarding supervising applicator duties and responsibilities, except, rather than providing the supervision and training required under R4-29-402(E) and (F), the qualifying party may rely on a licensed supervising applicator that the qualifying party ensures complies with R4-29-402(E) and (F).

R4-29-503. ~~Repealed Qualifying a Business License~~

A qualifying party shall qualify only one business license at a time. A qualifying party may qualify the one business license in each category of pest management in which the qualifying party has an active license.

R4-29-504. ~~Repealed Qualifying Party Management~~

A. A qualifying party shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the Commission's statutes and this Chapter and label and labeling directions.

B. A qualifying party who supervises the use, application, storage, or disposal of a pesticide shall hold an applicator license in the category applicable to the pesticide being used, applied, stored, or disposed.

C. A qualifying party shall ensure that an applicator employed by the business licensee has the protective clothing, safety supplies, and equipment specified by the label of each product used by the applicator and by the Commission's statutes and this Chapter. The qualifying party shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.

D. A qualifying party shall be readily available to an applicator employed by the business licensee while the applicator provides pest management services.

E. To be active in the management of the licensed business that the qualifying party is qualifying, a qualifying party shall be physically present at the primary business office at least once every 30 days and do all of the following while physically present at the primary business office:

1. Determine pesticide use by reviewing records of pesticide acquisitions, storage, disposal, and current inventory;
2. Review the pesticide inventory, including pesticides stored on a service vehicle, to determine compliance with labels, labeling, and the Commission's statutes and rules;
3. Review the training, supervision, and equipping of applicators employed by the business licensee to determine whether the training, supervision, and equipping is sufficient to enable the applicators to comply with labels, labeling, and the Commission's statutes and rules;
4. Review personnel records to determine whether an applicator employed by the business licensee is licensed in all applicable categories within the time-frames specified by A.R.S. § 32-2312;
5. Review office records and recordkeeping procedures to determine compliance with required recordkeeping and reporting; and
6. Ensure that any deficiency noted while performing the responsibilities listed in subsections (E)(1) through (E)(5) is corrected.

F. A qualifying party shall develop a written plan that specifies how the duties and responsibilities of the qualifying party are to be fulfilled if the qualifying party is absent or unavailable for any reason. The qualifying party shall ensure that the plan is implemented when the qualifying party is absent or unavailable.

G. A qualifying party shall not delegate the responsibility listed in subsection (E) unless the qualifying party submits written documentation to the Commission from a licensed medical or mental health care professional that indicates the licensed medical or mental health care professional is treating the qualifying party and is of the opinion that the qualifying party is unable to fulfill the qualifying party's duties and responsibilities.

H. Notice to Commission of an incident. A qualifying party shall determine whether the business licensee qualified by the qualifying party complied with R4-29-605(C). If the qualifying party determines that the business licensee has yet to comply with R4-29-605(C), the qualifying party shall provide written notice to the Commission within one business day after one of the following incidents is confirmed or alleged by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee:

1. Death or illness of an individual, animal, or fish;
2. Contamination of food, feed, drugs, or water supply;
3. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
4. Contamination of the environment that results in evacuation of the area.

R4-29-505. ~~Qualifying Party Recordkeeping~~

A. In addition to making the records required under R4-29-307 and R4-29-403, a qualifying party shall make and maintain the following records. Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disci-

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plinary action.

1. Copy of the specimen label and MSDS for each registered pesticide currently used by an applicator employed by the business licensee;
 2. Written inspection reports;
 3. Customer contracts for pest management services; and
 4. Personnel records including for each employee of the business licensee:
 - a. Date of hire;
 - b. Date on which pest management services are first performed;
 - c. Copy of license issued by the Commission;
 - d. Training and continuing education received;
 - e. Supervision received;
 - f. Protective clothing, safety supplies, and equipment issued to employee;
 - g. Name of supervisor; and
 - h. Employment ending date.
- B.** A qualifying party shall maintain the records required under subsections (A)(2) and (A)(3) for three years from the date on the customer proposal or contract. A qualifying party shall maintain the records required under subsection (A)(4) for three years after the employment ending date.
- C.** A qualifying party shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored. The qualifying party shall maintain records required under subsection (A)(1) as long as the registered pesticide is used by the business licensee.
- D.** Upon written request by the Commission, a qualifying party shall make the records required under this Section available for review by the Commission. The qualifying party from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The qualifying party shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The qualifying party shall be available to interpret the submitted records if requested by the Commission.
- E.** If a qualifying party cannot timely comply with a request made under subsection (D), the qualifying party shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- F.** The Commission shall:
 1. Modify the request made under subsection (D) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 2. Provide additional time to respond to the request made under subsection (D) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- G.** Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

ARTICLE 6. BUSINESS LICENSEE DUTIES AND RESPONSIBILITIES

R4-29-601. Compliance with Applicator Duties and Responsibilities

A business licensee shall comply with every provision in Article 3 regarding applicator duties and responsibilities. A business licensee shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the Commission's statutes and rules and label and labeling directions.

R4-29-602. Compliance with Supervising Applicator Duties and Responsibilities

A business licensee shall comply with every provision in Article 4 regarding supervising applicator duties and responsibilities. A business licensee shall ensure that a supervising applicator employed by the business licensee receives the supervision and training that the supervising applicator requires to comply fully with the Commission's statutes and rules and label and labeling directions.

R4-29-603. Supervision of Qualifying Party

A business licensee shall ensure that a qualifying party of the business licensee receives the supervision and training that the qualifying party requires to comply fully with the Commission's statutes and rules and label and labeling directions.

R4-29-604. Qualifying Party Required

A business licensee shall employ a qualifying party in each category of pest management in which the business licensee provides services. A business licensee may employ multiple qualifying parties. To qualify a business in a category of pest management, a qualifying party shall have an active qualifying party license in the pest management category. A qualifying party may qualify a business in every pest management category in which the qualifying party is licensed.

R4-29-605. Business Management

A. Financial responsibility.

1. A business licensee shall maintain the financial responsibility required by A.R.S. § 32-2313 and this Chapter;
2. A business licensee shall ensure that the required financial responsibility covers all pest management activities provided from the primary business office and each branch office; and
3. If there is an interruption in the financial responsibility of a business licensee, the business licensee shall immediately stop providing pest management services.

B. Use of business name and license number.

1. A business licensee shall prominently display the license issued by the Commission at the primary business office and each branch office.
2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Commission, on:
 - a. Customer proposals or contracts for pest management services;
 - b. Service records;
 - c. Inspection reports;
 - d. Written materials provided to customers or potential customers;
 - e. Correspondence;
 - f. Advertisements; and
 - g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
 - i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Commission issues the license or issues a business license change under R4-29-214 or after the service vehicle or trailer is acquired, whichever is sooner.
 - ii. Is in a color that contrasts with the color of the service vehicle and trailer;
 - iii. Is on both sides of the service vehicle and trailer;
 - iv. Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and
 - v. Uses at least two-inch numbers for the license number.
3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

C. Notice to Commission of an incident. A business licensee shall determine whether a qualifying party that qualifies the business licensee complied with R4-29-504(H). If the business licensee determines that the qualifying party has yet to comply with R4-29-504(H), the business licensee shall provide written notice to the Commission within one business day after one of the following incidents is confirmed or alleged by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee:

1. Death or illness of an individual, animal, or fish;
2. Contamination of food, feed, drugs, or water supply;
3. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
4. Contamination of the environment that results in evacuation of the area.

R4-29-606. Storing Pesticides and Devices

- A.** A business licensee shall provide a pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.
- B.** A business licensee shall secure the storage area required under subsection (A) from unauthorized entry by equipping its entrance or access with a lock.
- C.** Immediately after storing a pesticide, a business licensee shall conspicuously post a sign at the entrance or access to a non-vehicle storage area and on a vehicle storage area indicating that the pesticide is stored inside.
- D.** A business licensee shall provide sufficient ventilation to the outside of the storage area required under subsection (A) to prevent build-up of odors and preclude chemical injury to an individual or animal.
- E.** A business licensee shall provide the following in or immediately adjacent to the storage area required under subsection (A), including a storage area on a service vehicle:
 1. Electric or battery-powered lighting that is sufficient to read a pesticide label;
 2. Fully charged and operational fire extinguisher or fire suppression system appropriate to each pesticide stored in the

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area;

3. First-aid kit that includes the supplies listed in R4-29-607(6);
4. Emergency medical information including the telephone number of the state or local poison control center;
5. Material capable of absorbing a spill or leak of at least one gallon;
6. Specimen label and MSDS for each pesticide stored in the area; and
7. Washing facilities that include fresh water, soap, and towels.

R4-29-607. Equipping a Service Vehicle

A business licensee shall provide each service vehicle with the following:

1. All equipment and supplies required by the label and labeling to apply properly the pesticides on the service vehicle;
2. A measuring and pouring device compatible with the pesticides on the service vehicle;
3. Protective clothing and safety equipment suitable for use when handling, mixing, or applying the pesticides on the service vehicle;
4. Material capable of absorbing a spill or leak of at least one gallon;
5. A storage container large enough to hold material contaminated by absorbing a spill or leak of pesticides;
6. A first-aid kit that contains the following:
 - a. Antiseptic cleansing wipes, soap and water, or skin sanitizer;
 - b. Clean, uncontaminated, non-latex gloves;
 - c. Adhesive bandages, gauze, and tape;
 - d. Disposable towels;
 - e. First aid guide; and
 - f. Emergency telephone numbers including the telephone number of the state or local poison control center;
7. At least one gallon of clean, drinkable water for each individual using the service vehicle at one time;
8. Uncontaminated change of clothing;
9. Specimen label and MSDS for each pesticide on the service vehicle; and
10. A locking storage space designed to prevent a pesticide container from being damaged while in transit.

R4-29-608. Providing Termite Treatment

- A.** If a business licensee or an employee of a business licensee is advised that a pretreatment area is disturbed and the continuous chemical barrier is broken before concrete is poured or that a new-construction treatment area is disturbed, the business licensee shall ensure that the disturbed area is retreated.
- B.** A business licensee that performs a pretreatment or new-construction treatment shall establish vertical barriers at the exterior of foundation walls in stem-wall construction or the exterior of grade beam in monolithic construction after all grading and other construction-related soil disturbance is complete. This final-grade treatment, which may be completed after construction, is part of either the pretreatment or new-construction treatment.
- C.** A business licensee that provides a termite-treatment warranty shall ensure that the effective date of the warranty is the date on which treatment begins.
- D.** If subterranean termites occur in or on a residential or commercial structure within five years after a business licensee first performs a pretreatment or new-construction treatment of the structure, or performs a pretreatment or new-construction treatment of an addition that does not abut the slab of the structure that received the pretreatment or new-construction treatment, the business licensee shall re-treat the structure free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets pertaining to category B2 or B8.
- E.** If subterranean termites occur a third time on the exterior of a one or two unit residential structure within five years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.
 1. As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;
 2. For the purpose of this subsection and subsection (F):
 - a. A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;
 - b. A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and
 - c. A third occurrence means evidence of subterranean termites exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.
- F.** If subterranean termites occur a third time on the interior of a one or two unit residential structure within five years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a resi-

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dential structure where termite activity originates and that is livable or a garage.

- G.** A business licensee that performs a re-treatment under subsection (D) or (E) or a post-construction treatment under subsection (F) shall not charge the consumer for any expense incurred in providing the re-treatment or post-construction treatment to which the consumer is entitled under this Chapter.
- H.** If a business licensee goes to a structure to perform a re-treatment under subsection (D) or (E) or a post-construction treatment under subsection (F) and determines there is no evidence of subterranean termites, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.
- I.** If a business licensee determines that a re-treatment or post-construction treatment is necessary because the continuous chemical barrier is disturbed, the business licensee may charge the reasonable cost of reestablishing the barrier.
- J.** If a customer refuses a re-treatment or post-construction treatment as described in the Section, access to the customer's property, or to allow drilling in an area where drilling is necessary, the business licensee shall obtain the customer's printed name and dated signature on a document evidencing that the business licensee:
 - 1. Informed the customer of the right to a re-treatment or post-construction treatment at no charge.
 - 2. Provided the customer with a copy of this Section and the termiticide label requirements.
 - 3. Provided the customer with the Commission's telephone number, and
 - 4. Explained to the customer the benefits of having and the detriments of not having a re-treatment or post-construction treatment.

R4-29-609. Business Licensee Recordkeeping

- A.** In addition to making and maintaining the records required under R4-29-307, R4-29-403, and R4-29-505, a business licensee shall make and maintain records of:
 - 1. The financial responsibility required under R4-29-605(A);
 - 2. Date on which a service vehicle or trailer is acquired;
 - 3. Incident reports submitted to the Commission as required under R4-29-504(H) or R4-29-605(C);
 - 4. A pest management service provided to a customer, including a service providing under a warranty; and
 - 5. The evidence of customer refusal of a re-treatment or post-construction treatment required under R4-29-608(J).
- B.** A business licensee shall maintain the records as follows:
 - 1. Records under subsection (A)(1), current;
 - 2. Records under subsection (A)(2), as long as the service vehicle or trailer is owned by the business licensee;
 - 3. Records under subsection (A)(3), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
 - 4. Records under subsection (A)(4), three years except five years for a pest management service involving wood-destroying insect control or wood-destroying insect or fungi inspection;
 - 5. Records under subsection (A)(5), five years; and
 - 6. WDIIRs completed under subsection (C), five years. The business licensee shall consecutively number the WDIIRs and:
 - a. Maintain them in consecutive order; or
 - b. Maintain them in a different order and maintain a list of the WDIIRs in consecutive order that includes the date of the inspection and the heading under which each WDIIR is filed.
 - 7. A business licensee shall maintain all records required by subsections (A)(3) and (A)(4) that pertain to the use of a restricted-use pesticide separate from other records.
- C.** When an applicator employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:
 - 1. TARF number.
 - 2. If the business licensee has the property under warranty:
 - a. Account number.
 - b. Target pest.
 - c. Date of initial treatment.
 - d. Date of warranty expiration, and
 - 3. The TARF number of each TARF completed regarding the property after the WDIIR is completed.
- D.** TARF. A business licensee shall:
 - 1. Submit to the Commission a TARF, using a form approved by the Commission, within 30 days of completing a termite action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the final-grade treatment unless it is necessary to retreat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new-construction is complete when no further preventative treatment is necessary for the last unit at the project until the final-grade treatment unless it is necessary to retreat a disturbed continuous chemical barrier;
 - 2. Include the fee specified under R4-29-105(D) with each TARF and, if applicable, the penalty required under R4-29-105(E);

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3. Unless exempt under subsection (D)(4), submit a TARF after completing each of the following:
 - a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
 - b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
 - c. Final-grade treatment;
 - d. First corrective termite treatment at a site; and
 - e. Wood-destroying insect inspection.
4. Not submit a TARF after completing the following:
 - a. First corrective termite treatment at a site if the business licensee:
 - i. Performed a pretreatment or new-construction treatment at the site.
 - ii. Filed a TARF regarding the pretreatment or new-construction treatment, and
 - iii. Performs the first corrective treatment under R4-29-608(D) or under a warranty; or
 - b. Pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure if the business licensee:
 - i. Performed the pretreatment or new-construction treatment of the main structure.
 - ii. Filed a TARF regarding the pretreatment or new-construction treatment.
 - iii. Has the structure under warranty, and
 - iv. Treats the abutting addition under the terms of the site warranty.
5. Include the information required under A.R.S. § 32-2304(A)(13) and the following on a TARF:
 - a. License number of the licensed business that performed the work;
 - b. License number of the qualifying party that qualifies the licensed business in category B2 or B8, as applicable;
 - c. For a wood-destroying insect inspection, indicate whether:
 - i. There was evidence of infestation, conditions conducive to infestation, or damage present;
 - ii. Treatment was performed for an infestation, and
 - iii. Corrective actions were taken for conditions conducive or damage present;
 - d. For a pretreatment, new-construction treatment, or post-construction preventative treatment to establish an exterior vertical barrier, indicate:
 - i. Chemical used and its EPA registration number.
 - ii. Amount of chemical used.
 - iii. Percentage of active ingredient in the chemical used, and
 - iv. Square and linear footage treated; and
 - e. For a post-construction corrective termite treatment, indicate:
 - i. Type of treatment.
 - ii. Target organism.
 - iii. Chemical used and its EPA registration number.
 - iv. Amount of chemical used, and
 - v. Percentage of active ingredient in the chemical used.
- E.** If the Commission requests a record from a business licensee as a result of the Commission determining there is an emergency endangering the health or safety of an individual, animal, or the environment, the business licensee shall provide the record to the Commission within one hour.
- F.** Upon written request by the Commission, a business licensee shall make the records required under this Section available for review by the Commission. The business licensee from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The business licensee shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The business licensee shall be available to interpret the submitted records if requested by the Commission.
- G.** If a business licensee cannot timely comply with a request made under subsection (F), the business licensee shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- H.** The Commission shall:
 1. Modify the request made under subsection (F) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 2. Provide additional time to respond to the request made under subsection (F) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- I.** Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

ARTICLE 7. INSPECTIONS; INVESTIGATIONS; COMPLAINTS; DISCIPLINARY PROCEDURES

R4-29-701. General Provisions

- A. A party to a proceeding involving the Commission may be self-represented or represented by an attorney licensed in Arizona.
- B. If a party to a proceeding involving the Commission wishes to be represented by an attorney licensed in a state other than Arizona, the party shall ensure that the attorney is approved in advance to appear pro hac vice by the Arizona Supreme Court.
- C. If a party to a proceeding involving the Commission will be represented by an attorney, the party shall ensure that the attorney provides the Commission with written notice of intent to appear.
- D. The Commission shall serve a notice of complaint or a notice of hearing on the individual or entity that is the subject of the matter being noticed by personal delivery or first-class, certified mail with a return receipt requested to the address of record with the Commission. The Commission shall serve all other documents by personal delivery or first-class mail.
- E. If an attorney submits the notice required under subsection (C), the Commission shall make service of all notices and documents as described in subsection (D) on the attorney.
- F. Service by the Commission is complete on the date of personal delivery, the date on a return receipt, or five days after a first-class mail postmark date.
- G. To ensure timely receipt of all notices and documents served, a party to a proceeding involving the Commission shall provide written notice to the Commission of a change in address.

R4-29-702. Inspections, Investigations, and Complaints

- A. To monitor compliance with the Commission's statutes and this Chapter and to determine whether pest management services are being provided in safe and effective manner, the Commission may conduct an inspection, with or without notice to a licensee, of:
 - 1. The licensee's office, including a branch office;
 - 2. The licensee's service vehicle or trailer; or
 - 3. The licensee while engaged in providing pest management services.
- B. Following an inspection conducted under subsection (A), the Commission shall provide a report to the inspected licensee that notes whether corrective action is required and, if so, the date by which the licensee is to complete the corrective action.
- C. If corrective action is required following an inspection, the licensee shall provide written notice to the Commission, by the date specified in the inspection report, that the corrective action is complete. If the licensee fails to complete the corrective action and provide the written notice required by this subsection, the Commission shall open an inquiry or file a complaint against the licensee.
- D. An individual or entity shall not refuse to attend, testify, or produce evidence sought by the Commission in an investigation or proceeding instituted by or involving the Commission unless the testimony or evidence is privileged under either the U.S. or Arizona constitution and the individual or entity asserts the privilege before testifying or producing the evidence. If an individual or entity asserts the privilege against self incrimination, the Commission may, with written approval of the attorney general, issue a written order or apply to an appropriate court for an order compelling the testimony or production of evidence.
- E. Testimony or evidence compelled under subsection (D) is not admissible or usable in any proceeding except one involving a charge of perjury, false swearing, tampering with evidence, or another offense committed in connection with the testimony or production of evidence.
- F. If the Commission provides notice that it has filed a complaint against an individual or entity, the individual or entity shall submit to the Commission a written response that addresses the allegations in the complaint within 20 days of the date of the notice.
- G. The license of a licensee who is provided written notice of a pending investigation or complaint does not expire even if the licensee fails to renew timely. The Commission shall place the license on non-disciplinary suspension until the investigation is complete or the complaint is adjudicated.

R4-29-703. Settlement Conferences

- A. If the Commission determines that it is in the best interest of the state, the Commission shall designate one or more individuals to conduct a settlement conference to negotiate a proposed resolution with an individual or entity against whom the Commission has filed a complaint.
- B. The Commission shall conduct a settlement conference informally. The Commission shall not place a witness under oath at a settlement conference and shall not issue a subpoena for attendance.
- C. The Commission shall not make an audio, video, or stenographic recording of a settlement conference. The Commission may make a general written record of a settlement conference.
- D. A party to a settlement conference shall not disclose to the Commission a settlement offer that does not result in a proposed resolution.

- E. A party to a settlement conference shall not introduce into evidence at a formal hearing a statement made at the settlement conference unless all parties agree to the introduction.
- F. Following a settlement conference, the Commission shall accept, reject, or modify the proposed resolution negotiated by participants in the settlement conference. If the Commission rejects a proposed resolution involving a licensee, the Commission shall dismiss the matter, conduct further investigation, renegotiate a proposed resolution, or send the matter to formal hearing. If the Commission rejects a proposed resolution involving an unlicensed individual or entity, the Commission shall dismiss the matter, conduct further investigation, renegotiate a proposed resolution, send the matter to formal hearing, or impose discipline as allowed by law.

R4-29-704. Consent Agreements

- A. After a settlement conference, the Commission may impose disciplinary action in a consent agreement and order. To determine the disciplinary action that is appropriate, the Commission shall consider the following:
 - 1. Prior violation resulting in discipline;
 - 2. Dishonest or self-serving motive;
 - 3. Amount of experience as a licensee;
 - 4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Commission;
 - 5. Submission of false evidence, false statement, or other deceptive practice during the investigative or disciplinary process;
 - 6. Refusal to acknowledge wrongful nature of violation;
 - 7. Likelihood that a similar violation will occur again;
 - 8. Degree of harm resulting from the violation; and
 - 9. Whether harm resulting from the violation was cured.
- B. Although the Commission may use evidence of a prior violation resulting in discipline to determine disciplinary action in a current matter, the Commission shall not use evidence of a prior violation as evidence of a violation in a current matter.
- C. The Commission shall ensure that a consent agreement includes the following:
 - 1. General nature of complaint;
 - 2. Citation to statutes and rules alleged to be violated;
 - 3. Disciplinary action to be taken against the individual or entity complained about;
 - 4. Effective date of the disciplinary action if different from the date of the consent agreement;
 - 5. Corrective action to be taken by the individual or entity complained about; and
 - 6. Date by which the corrective action is to be complete.
- D. For a consent agreement to be effective, the Commission chairperson or the chairperson's designee and the individual or entity complained about shall sign the consent agreement.
- E. If an individual or entity complained about refuses to sign a consent agreement, the Commission shall:
 - 1. Send the matter for formal hearing if the individual or entity is a licensee; or
 - 2. Issue a decision and order if the individual or entity is unlicensed.
- F. By signing a consent agreement under subsection (D), an individual or entity waives the right to a formal hearing, rehearing, or judicial review of the findings of fact, conclusions of law, or order contained in the consent agreement.

R4-29-705. Hearing Procedures

- A. The Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. If the Commission denies a license to an applicant, the applicant may file with the Commission a written request for a hearing within 30 days after service of the notice of denial. The applicant shall state in the request for hearing the applicant's name, address and telephone number, and the reasons why the applicant believes the Commission's decision to deny the applicant's license was incorrect. At a hearing regarding a license denial, the applicant has the burden of proving that the applicant is qualified to be licensed in accordance with the Commission's statutes and this Chapter, and shall limit the applicant's evidence presented to that which was originally presented to the Commission for its determination on the application.
- C. If the Commission serves a complaint and notice of hearing on a licensee, the licensee may file a written answer with the Commission within 20 days after service of the complaint and notice of hearing. The licensee shall state in the answer the licensee's name, address and telephone number, and a response to the allegations contained in the complaint and notice of hearing. If the licensee does not timely file a written answer, the Commission shall deem the allegations in the complaint admitted by default. The Commission shall service a notice of default on the licensee stating that the allegations in the complaint shall be deemed admitted 10 days after service of the notice of default. If the licensee does not respond within 10 days after the notice of default is served, the Commission may take disciplinary action without conducting a hearing. If the licensee responds within 10 days after the notice of default is served, the Commission shall continue with the disciplinary process.

D. A party that wants the Commission to issue a subpoena to compel the appearance of a witness at a hearing or the production of documentary evidence shall submit a written application to the Commission. The party that applies for a subpoena shall serve the subpoena.

R4-29-706. Review or Rehearing of a Commission Decision

- A. The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (J), a party is required to file a motion for rehearing or review of a decision of the Commission to exhaust the party's administrative remedies
- C. A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.
- D. The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct by the Commission, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 7. The Commission's decision is the result of passion or prejudice; or
 8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- G. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H. If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- I. The Commission may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that an extension of time will:
1. Further administrative convenience, expedition, or economy; or
 2. Not cause undue prejudice to any party.
- J. If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review.

R4-29-707. Judicial Review of Commission Order

- A. Except as provided in R4-29-706(J), a Commission order is final on the expiration of time for filing a motion for review or rehearing under R4-29-706 or on denial of a motion for review or rehearing, whichever is later.
- B. A party that has exhausted the party's administrative remedies may appeal a final order of the Commission under A.R.S. Title 12, Chapter 7, Article 6.

R4-29-708. Disciplinary Action

- A. Following entry of a final order that a licensed or unlicensed individual or entity violated the Commission's statutes or this Chapter, the Commission shall impose discipline as allowed by A.R.S. §§ 32-2304, 32-2321, 32-2327, and 32-2329. In considering the discipline to impose, the Commission shall consider the factors identified in R4-29-704.
- B. The Commission shall place a licensee on probation, as allowed by A.R.S. § 32-2321, if the Commission determines that probation will benefit the licensee or protect the public or environment. The Commission shall define probation requirements that benefit the licensee or protect the public or environment, which may include:
1. Reporting by or monitoring of the licensee, or
 2. Participating in educational activities other than those required by the Commission's statutes or this Chapter.

- C. The Commission shall impose a civil penalty on a licensee, as allowed by A.R.S. § 32-2321, for failure to file or late filing of a TARF if:
1. The licensee has a prior violation of the same type; and
 2. The number of TARFs not filed or filed late equals or exceeds 10 percent of the TARFs that the licensee filed in the previous 12 months.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

[R06-355]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R9-22-701 | Amend |
| R9-22-701.10 | New Section |
| R9-22-703 | Amend |
| R9-22-704 | Amend |
| R9-22-705 | Amend |
| R9-22-714 | Amend |
| R9-22-716 | Repeal |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 36-2903.01, 36-2904
Implementing statute: A.R.S. §§ 36-2903.01, 36-2904, 36-2907, 36-2908
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 2575, July 21, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rules include definitions that apply specifically to Standards of Payments and outline the provisions that apply to payments, including reimbursement to a provider, transferring payments, and contracting with entities for specialized services. The proposed rulemaking is intended to update these rules, ensuring that they represent the agency's current practice.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.
- 7. 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

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

The economic impact will be minimal since the majority of the rules have been updated for clarity and conciseness. Rule R9-22-714 requires providers to verify that individuals under their supervision have not been prohibited to provide services to Medicaid members. This provision was updated to reflect 42 CFR 438.214 and it is anticipated that the impact will be minimal.

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of September 18, 2006. Please send written comments to the above address by 5:00 p.m., November 13, 2006. E-mail comments will be accepted.

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

Date: November 14, 2006
Time: 2:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: November 14, 2006
Time: 2:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Public Hearing

Date: November 14, 2006
Time: 2:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Public Hearing

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-701.	Standard for Payments Related Definitions
<u>R9-22-701.</u>	<u>10 Scope of the Administration's Liability</u>
R9-22-703.	Payments by the Administration
R9-22-704.	Transfer of Payments
R9-22-705.	Payments by Contractors
R9-22-714.	Payments to Providers
R9-22-716.	Specialty Contracts

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-701. Standard for Payments Related Definitions

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

“Accommodation” means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is semi-private except when the member must be isolated for medical reasons. Other types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the service area.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member, beginning with the day of admission, including the day of death, but excluding the day of discharge, provided that all eligibility, medical necessity and medical review requirements are met.

“Ancillary department” means the department of a hospital that provides outpatient services and ancillary services, as described in the Medicare Provider Reimbursement Manual.

“APC” means the Ambulatory Payment Classification system under 42 CFR Part 419 used by Medicare for grouping clinically and resource similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Business agent” means a firm such as a billing service or accounting firm that renders statements and receives payment in the name of the provider.

“Capital costs” means capital-related costs such as building and fixtures, and movable equipment as described in the Medicare Provider Reimbursement Manual.

“Copayment” means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

“Cost-To-Charge Ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for AHCCCS-covered services that meet medical review criteria of AHCCCS or a contractor.

“CPT” means Current Procedural Terminology, published and updated by the American Medical Association, which is a nationally accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and provides a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g).

“Date of eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket

“Encounter” means a record of a medically related service rendered by an AHCCCS registered provider to an AHCCCS member enrolled with a capitated Contractor on the date of service.

“Existing outpatient services” means a service provided by the hospital prior to the hospital filing an increase in its charge master, regardless of whether the service was explicitly described in the hospital charge master before filing the increase, or how the service was described in the charge master before filing the increase.

“Factor” means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold or transferred to the individual organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

“Free Standing Children Hospital” means a separately standing hospital dedicated to provide the majority of services to children with at least 120 pediatric beds.

“Global Insights Prospective Hospital Market Basket” means the Global Insights CMS Hospital price index for prospective hospital reimbursement, which is published by Global Insights.

“HCPCS” means the Health Care Procedure Coding System, published and updated by Center for Medicare and Medicaid Services (CMS), which is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, other substances, equipment, supplies or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as defined under 45 CFR Part 162, which establishes standards and requirements for the electronic transmission of certain health information by defining codes sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.

“Level I Trauma Center” means any acute care hospital that is defined under R9-22-2101(F).

“Medical education costs” means direct hospital costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post payment review, or medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial ratesetting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services and is not a free standing psych hospital, such as an IMD, that is paid via ADHS rates.

“Observation day” means a physician ordered evaluation period of less than 24 hours to determine the need of treatment or the need for admission as an inpatient.

“Operating costs” means an AHCCCS allowable accommodation and ancillary department hospital costs excluding capital and medical education costs.

“Organized health care delivery system” means a public or private organization for delivering health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under Article 7 of this Chapter and A.R.S. § 36-2903.01(H)

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(A).

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

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“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

“Procedure Code” means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates defined by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public Hospital” means a hospital that is owned and operated by county, state or hospital health care district.

“Rebase” means the process by which the most currently available and complete year Medicare Cost Report data and AHCCCS claim and encounter data of the corresponding year, are collected and analyzed to reset the Inpatient Hospital Tiered Per Diem rates, or the Outpatient Hospital Capped Fee For Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of certain contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS registered provider by AHCCCS to explain the disposition of a claim.

“Revenue Code” means a numeric code, which identifies a specific accommodation, ancillary service or billing calculation, as defined by the National Uniform Billing committee for UB-92 forms.

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure or revenue codes, peer group, or NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

“Transfer of payment” means where a payment made for AHCCCS covered services is transferred to another entity that is not an AHCCCS registered provider.

R9-22-701.10 Scope of the Administration’s Liability

The Administration shall bear no liability for providing covered services to or completing a plan of treatment for any member beyond the date of termination of the member’s eligibility. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in 9 A.A.C. 22, Articles 2 and 5 and as specified in contract.

R9-22-703. Payments by the Administration

- A. General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B. Timely submission of claims.
 - 1. Under A.R.S. § 36-2904, the Administration shall deem a paper or electronic claim as submitted on the date that it is received by the Administration. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 - 2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 - 3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, twelve months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
 - 4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an IHS or tribal facility for a covered service unless the claim is initially submitted within twelve months from either the date of service, date of discharge or eligibility posting.
- C. Claims processing.

1. The Administration shall notify the AHCCCS registered provider with a remittance advice when a claim is processed for payment.
 2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
 - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
 3. A claim is paid on the date indicated on the disbursement check.
 4. A claim is denied as of the date of the remittance advice.
 5. The Administration shall process a hospital claim under this Article.
- D. Prior authorization.**
1. An AHCCCS registered provider shall:
 - a. Obtain prior authorization from the Administration for non-emergency hospital admissions and covered services as specified in Articles 2 and 12 of this Chapter,
 - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
 - c. Make records available for review by the Administration upon request.
 2. The Administration shall reduce payment of or deny claims if an AHCCCS registered provider fails to obtain prior authorization or notify the Administration under Article 2 of this Chapter and this Article.
 3. If the Administration issues prior authorization for a specific level of care but subsequent medical review indicates that a different level of care was medically appropriate, the Administration shall pay the claim, or adjust the claim to pay, for the cost of the appropriate level of care.
- E. Review of claims and coverage for hospital supplies.**
1. The Administration may conduct prepayment and postpayment review of any claims, including but not limited to hospital claims.
 2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Shampoo,
 - l. Powder,
 - m. Lotion,
 - n. Comb, and
 - o. Patient gown.
 3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
 - a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
 4. The Administration shall determine in a hospital claims review whether services rendered were:
 - a. Covered services as defined in R9-22-102;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and

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d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.

5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.

F. Overpayment for AHCCCS services.

1. An AHCCCS registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS registered provider fails to return the overpaid amount to the Administration.
3. The Administration shall document any recoupment of an overpayment on a remittance advice.
4. An AHCCCS registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS registered provider disagrees with the recoupment action.

R9-22-704. Transfer of Payments

~~**A. Business agent.** For purposes of this Section, a business agent is a firm such as a billing service or accounting firm that renders statements and receives payment in the name of the contractor or AHCCCS registered provider.~~

~~**B. Allowable transfer of payments.** The Administration or a program contractor may make payments to other than an AHCCCS registered provider, and the Administration may make payments to other than a program contractor after considering whether:~~

1. There is an assignment to a government agency or there is an assignment under a court order; or
2. A business agent's compensation is:
 - a. Related to the cost of processing the statements; and
 - b. Not dependent upon the actual collection of payment.

~~**C. Payment to physicians, dentists, or other health professionals.** The Administration or a program contractor shall make payments to physicians, dentists, or other health professionals as follows:~~

1. To the employer of the physician, dentist, or other health professional, if the physician, dentist or other health professional is required, as a condition of employment, to relinquish fees to the employer;
2. To a foundation, plan, consortium or other similar organization, including a health care service organization, that furnishes health care through an organized health care delivery system, if there is a contractual arrangement between the organization and the person furnishing the services under which the organization submits a claim for the services; or
3. To the facility in which the service is provided, if there is a contractual relationship between the facility and the physician, dentist, or other health professional furnishing the services under which the facility submits the claim for the services.

~~**D. Prohibition of transfer of payments for contractors or AHCCCS registered providers.** A contractor or an AHCCCS registered provider shall not assign all or part of AHCCCS payments for covered services furnished to a member to any party except as specified in this Section.~~

~~**E. Prohibition of transfer of payments to factors.** The Administration shall not make payment for covered services furnished to a member by a contractor or an AHCCCS registered provider to, or through a factor, either directly, or by virtue of a power of attorney given to the factor.~~

~~**A. Payment for covered services made by the Administration or a contractor may be made only:**~~

1. To the provider;
2. To anyone in accordance with a reassignment from the provider to a government agency or reassignment by a court order;
3. To a business agent, if the agent's compensation for this service is:
 - a. Related to the cost of processing the billing;
 - b. Not related on a percentage or other basis to the amount that is billed or collected; and
 - c. Not dependent upon the collection of the payment;
4. To the employer of the provider, if the provider is required as a condition of employment to turn over his fees to the employer;
5. To the inpatient facility in which the service is provided, if the practitioner has a contract under which the inpatient facility submits the claim; or
6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim.

~~**B. Payment for any covered service furnished to a member by a provider may not be made by the Administration or a contractor to or through a factor, either directly or by power of attorney.**~~

R9-22-705. Payments by Contractors

A. General requirements. A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for the reimbursement and coordination of care provided to a member. Except as

provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.

1. Providers. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
 2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor at the Administration's capped fee-for-service schedule rate if:
 - a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
 - b. The service is emergent under Article 2 of this Chapter.
- B. Timely submission of claims.**
1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in contract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in contract, a contractor shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, twelve months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
- C. Date of claim.** A contractor's date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor. A hospital claim is considered paid on the date indicated on the disbursement check. A denied hospital claim is considered adjudicated on the date of the claim's denial. For a claim that is pending for additional supporting documentation specified in A.R.S. §§ 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. §§ 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D. Payment for inpatient hospital services.** A contractor shall reimburse an in-state provider and a noncontracting provider for inpatient hospital services rendered with an admission date on or after March 1, 1993, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.
- E. Payment for outpatient hospital services.**
1. A contractor shall reimburse an in-state provider and a noncontracting provider for outpatient hospital services rendered on or after March 1, 1993 through June 30, 2005, at either a rate specified by a subcontract that complies with R9-22-715(A) or, in absence of a subcontract, as described in R9-22-712 or under A.R.S. § 36-2903.01, as amended by Laws 2003, Chapter 268, § 3, and as amended by Laws 2004, Second Regular Session, Chapter 279, § 3. Subcontract rates, terms, and conditions are subject to review, and approval or disapproval, under A.R.S. § 36-2904 and R9-22-715.
 2. A contractor shall reimburse an in-state provider and noncontracting provider for outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10 and A.R.S. § 36-2903.01 as amended by Laws 2004, Second Regular Session, Chapter 279, § 3 and this Article. Subcontract rates, terms, and conditions are subject to review, and approval or disapproval, under A.R.S. § 36-2904 and R9-22-715.
- F. Inpatient and outpatient out-of-state hospital payments.** A contractor shall reimburse out-of-state hospitals for covered inpatient and outpatient service and associated professional fees provided to an AHCCCS member at the lesser of the negotiated rate, or the rates as described under A.R.S. § 36-2903.01 and this Article.
- G. Payment for observation days.** A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-

712, R9-22-712.10, and R9-22-712.45. An “observation day” means a physician-ordered evaluation period of less than 24 hours to determine the need of treatment or the need for admission as an inpatient.

H. Review of claims and coverage for hospital supplies.

1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.
2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost effectiveness of an alternative treatment. Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor’s reasonable activities necessary to perform concurrent review and shall make the hospital’s medical records pertaining to a member enrolled with a contractor available for review.
3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for a specific level of care, but medical review of a claim indicates that a different level of care was medically appropriate, a contractor shall adjust and pay the claim to reflect the cost for the appropriate level of care. An adjustment in payment for a different level of care is effective on the date when the different level of care is medically appropriate.
4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures and meets the requirements of R9-22-715.
5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Disposable razor,
 - l. Shampoo,
 - m. Powder,
 - n. Lotion,
 - o. Comb, and
 - p. Patient gown.
6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
 - a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
7. The contractor shall determine in a hospital claims review whether services rendered were:
 - a. Covered services as defined in R9-22-102;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.
8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.

I. Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration’s capped fee-for-service schedule.

- J.** Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:
1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent plus a fee of 1 percent penalty of the rate for each month or portion of the month thereafter.
- K.** Interest payment. In addition to the requirements in subsection (J), a contractor shall pay interest for late claims as defined by contract.

R9-22-714. Payments to Providers

- A.** Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B.** Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
1. The provider personally furnishes the service to a specific member; For purposes of this Section, services personally furnished by a provider also include any of the following and the provider shall verify that those performing services under his/her supervision have not been placed on the Program Exclusion list that is published monthly in the Federal Register by the United States Department of Health and Human Services Office of the Inspector General: and
 - a. Services provided by medical residents or dental students in a teaching environment, or
 - b. Services provided by a licensed or certified assistant under the general supervision of a licensed practitioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, and 4 A.A.C. 43 and 4 A.A.C. 45.
 2. The service contributes directly to the diagnosis or treatment of a specific member, and
 3. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C.** Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
1. A surgical pathology service;
 2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
 3. A clinical consultation service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
 - c. Results in a written narrative report included in the member's medical record,
 - d. Requires the exercise of medical judgment by the consultant pathologist, and
 - e. Is listed in the capped fee-for-service schedule; or
 4. A clinical laboratory interpretative service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Results in a written narrative report included in the member's medical record,
 - c. Requires the exercise of medical judgment by the consultant pathologist, and
 - d. Is listed in the capped fee-for-service schedule.

R9-22-716. Specialty Contracts Repealed

The Director may contract with entities for specialized hospital and medical services including:

1. Neonatology;
2. Neurology;
3. Cardiology;
4. Burn care under A.R.S. § 36-2903.01, and
5. Transplant services.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R06-356]

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R9-28-701.10	New Section
R9-28-702	Repeal
R9-28-703	Repeal
R9-28-704	Repeal
R9-28-705	Repeal
R9-28-706	Repeal
R9-28-707	Repeal
R9-28-708	Repeal
R9-28-709	Repeal
R9-28-711	Repeal
R9-28-713	Repeal
R9-28-714	Repeal
R9-28-715	Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-2903.01, 36-2904
Implementing statute: A.R.S. §§ 36-2903.01, 36-2904, 36-2932, 36-2938
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 2576, July 21, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The rules outline the provisions that apply to payments, including reimbursement to a provider, transferring payments, contracting with entities for specialized services and when submitting claims.
The proposed rulemaking is intended to update these rules, ensuring that they represent the agency's current practice.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No study was reviewed during this rulemaking, and the agency does not anticipate reviewing any studies.
- 7. 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
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The economic impact will be minimal to none since the rules have been repealed and cross-referenced to Chapter 22. The rules in Chapter 28 were duplicative of the rules which apply to the acute population.

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of September 18, 2006. Please send written comments to the above address by 5:00 p.m., November 13, 2006. E-mail comments will be accepted.

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

Date: November 14, 2006
Time: 2:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: November 14, 2006
Time: 2:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Public Hearing

Date: November 14, 2006
Time: 2:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Public Hearing

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

- R9-28-701.10 General Requirements
- R9-28-702. Charges to Members Repealed
- R9-28-703. Claims Repealed
- R9-28-704. Transfer of Payments Repealed
- R9-28-705. Payments by Program Contractors Repealed
- R9-28-706. Payments by the Administration for Hospital Services Provided to an Eligible Person Repealed
- R9-28-707. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care Repealed
- R9-28-708. Payment for Non-hospital services Repealed
- R9-28-709. Reinsurance Repealed
- R9-28-711. Payments Made on Behalf of a Program Contractor; Recovery of Funds Repealed
- R9-28-713. Hospital Rate Negotiations Repealed
- R9-28-714. Payments to Providers Repealed
- R9-28-715. Specialty Contracts Repealed

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-701.10. General Requirements

The following reimbursement requirements are applicable to the ALTCS program as described in Chapter 22, Article 7. Replace the term "contractor" with "program contractor" for the following rules in the ALTCS program:

1. Scope of the Administration's Liability R9-22-701.10
2. Charges to Members R9-22-702
3. Payments by the Administration or a Program Contractor R9-22-703 and R9-22-705
4. Payments by the Administration for Hospital Services Provided to an Eligible Person R9-22-712; R9-22-712.01 and R9-22-712.10
5. Transfer of Payments R9-22-704
6. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care R9-22-709
7. Payment for Non-hospital services R9-22-710
8. Reinsurance R9-22-720
9. Payments Made on Behalf of a Program Contractor; Recovery of Funds R9-22-713
10. Hospital Rate Negotiations R9-22-715
11. Payments to Providers R9-22-714
12. Specialty Contracts R9-22-705, R9-22-712 and R9-22-201

R9-28-702. Charges to Members Repealed

- ~~**A.** Except as provided in subsections (B), (C), and (D), an AHCCCS registered provider shall not do either of the following, unless services are not covered or without first receiving verification from the Administration that the person was not an eligible person on the date of service:~~
- ~~1. Charge, submit a claim to, demand or collect payment from a person claiming to be an eligible person; or~~
 - ~~2. Refer or report a person claiming to be an eligible person to a collection agency or credit reporting service.~~
- ~~**B.** An AHCCCS registered provider that submits a claim shall not charge more than the actual, reasonable cost of providing the covered service.~~
- ~~**C.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member as follows:~~
- ~~1. To collect an authorized copayment;~~
 - ~~2. To recover from a member that portion of a payment made by a third party to the member if the payment duplicates AHCCCS paid benefits and is not assigned to a contractor;~~
 - ~~3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member's AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied.~~

- D.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment for services from a member if:
1. The member requests the provision of a service that is not covered or not authorized by the contractor or the Administration; and
 2. The provider prepares and provides the member with a document describing the overall services and the approximate cost of the services; and
 3. The member signs the document prior to the services being provided, indicating that the member understands and accepts responsibility for payment.

R9-28-703. Claims Repealed

An AHCCCS registered provider shall submit all claims for covered services rendered to:

1. A member enrolled with a program contractor, to the program contractor under A.A.C. R9-22-705 and this Article; or
2. A FFS member, to the Administration for payment under A.A.C. R9-22-703 and this Article.

R9-28-704. Transfer of Payments Repealed

- A.** Business agent. For purposes of this Section, a business agent is a firm such as a billing service or accounting firm that renders statements and receives payment in the name of the program contractor or AHCCCS registered provider.
- B.** Allowable transfer of payments. The Administration or a program contractor may make payments to other than an AHCCCS registered provider, and the Administration may make payments to other than a program contractor after considering whether:
1. There is an assignment to a government agency or there is an assignment under a court order; or
 2. A business agent's compensation for this service is:
 - a. Related to the cost of processing the statements; and
 - b. Not dependent upon the actual collection of payment.
- C.** Payment to physicians, dentists, or other health professionals. The Administration or a program contractor shall make payments to a physician, dentist or other health professional as follows:
1. To the employer of the physician, dentist or other health professional, if the physician, dentist, or other health professional is required, as a condition of employment, to relinquish fees to the employer;
 2. To a foundation, plan, consortium, or other similar organization, including a health care service organization, that furnishes health care through an organized health care delivery system, if there is a contractual arrangement between the organization and the person furnishing the services under which the organization submits a claim for the services; or
 3. To the facility in which the service is provided, if there is a contractual relationship between the facility and the physician, dentist, or other health professional furnishing the services under which the facility submits the claim for the services.
- D.** Prohibition of transfer of payments for program contractors or AHCCCS registered providers. A program contractor or an AHCCCS registered provider shall not assign all or part of AHCCCS payments for covered services furnished to a member to any party except as specified in this Section.
- E.** Prohibition of transfer of payments to factors. The Administration shall not make payment for covered services furnished to a member by a contractor, or an AHCCCS registered provider to, or through a factor, either directly, or by virtue of a power of attorney given to the factor.

R9-28-705. Payments by Program Contractors Repealed

- A.** General requirements. A contractor shall contract with providers as described in A.A.C. R9-22-705.
- B.** Timely submission of claims. A contractor shall pay timely submitted claims as described in A.A.C. R9-22-705.
- C.** Date of claim. A contractor shall determine the date of receipt of a claim as described in A.A.C. R9-22-705.
- D.** Payment for inpatient hospital services. A contractor shall reimburse a provider for inpatient hospital services as described in A.A.C. R9-22-705.
- E.** Payment for outpatient hospital services. A contractor shall reimburse a provider for outpatient hospital services as described in A.A.C. R9-22-705.
- F.** Inpatient and outpatient out-of-state hospital payments. A contractor shall reimburse a provider for out-of-state services as described in A.A.C. R9-22-705.
- G.** Payment for observation days. A contractor shall reimburse a provider for services related to observation days as described in A.A.C. R9-22-705.
- H.** Review of claims. If a contractor conducts a review of claims, the contractor shall conduct the review as described in A.A.C. R9-22-705.
- I.** Non-hospital claims. A contractor shall pay claims for services other than hospital services as described in A.A.C. R9-22-705.
- J.** Payments to hospitals. A contractor shall reimburse a hospital as described in A.A.C. R9-22-705.
- K.** Interest payment. A contractor shall pay interest on late claims as described in A.A.C. R9-22-705.

Notices of Proposed Rulemaking

R9-28-706. Payments by the Administration for Hospital Services Provided to an Eligible Person Repealed

A. Payment for medically necessary outpatient hospital services.

1. The Administration shall pay for medically necessary outpatient hospital services provided to an eligible person from the effective date of eligibility to the date of enrollment with a program contractor at the negotiated rate, capped fee-for-service rate, or in the amount of the billed charges, whichever is lowest.
2. An eligible person residing in an area that is not served by a program contractor is eligible for ALTCS covered services. The Administration shall make payment for medically necessary outpatient hospital services provided to the person at the negotiated rate, capped fee-for-service rate, or in the amount of the billed charges, whichever is lowest.
3. The Administration shall pay for medically necessary outpatient hospital services provided to an eligible person by an out-of-state provider at the capped fee-for-service rate under this Article or the Medicaid rate that is in effect for the state in which the provider is located at the time services are provided, whichever is lower.

B. The Administration shall make payment in accordance with 9 A.A.C. 22, Article 7 for covered hospital services provided to an eligible person on or after March 1, 1993.

R9-28-707. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care Repealed

A contractor is liable to a hospital for the hospital's provision of emergency and subsequent care under A.A.C. R9-22-709, R9-28-705, and Article 2 of this Chapter.

R9-28-708. Payment for Non-hospital services Repealed

Capped fee for service for ALTCS services. The Administration shall pay for ALTCS services in accordance with A.A.C. R9-22-710.

R9-28-709. Reinsurance Repealed

A program contractor shall submit to the Administration all reinsurance claims for services rendered to a member enrolled with the program contractor as specified in A.A.C. R9-22-720.

R9-28-711. Payments Made on Behalf of a Program Contractor; Recovery of Funds Repealed

The Administration may make payments on behalf of a program contractor and may recover funds from a program contractor or AHCCCS registered provider according to standards under A.A.C. R9-22-713. For purposes of this Section, the term "contractor" as it appears in A.A.C. R9-22-713 means "program contractor."

R9-28-713. Hospital Rate Negotiations Repealed

A. A program contractor that negotiates with a hospital for inpatient hospital and outpatient hospital services shall reimburse the hospital for a member's care under A.A.C. R9-22-715.

B. The Administration may negotiate or contract as described under R9-22-715.

R9-28-714. Payments to Providers Repealed

The Administration shall pay providers under A.A.C. R9-22-714 and Article 2 of this Chapter.

R9-28-715. Specialty Contracts Repealed

The Director may negotiate specialty contracts under A.A.C. R9-22-716.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R06-357]

PREAMBLE

1. Sections Affected

- R9-31-107
- R9-31-701
- R9-31-701.10
- R9-31-702
- R9-31-703
- R9-31-704
- R9-31-705

Rulemaking Action

- Repeal
- Amend
- New Section
- Repeal
- Repeal
- Repeal
- Repeal

Notices of Proposed Rulemaking

R9-31-707	Repeal
R9-31-709	Repeal
R9-31-710	Repeal
R9-31-711	Repeal
R9-31-713	Repeal
R9-31-714	Repeal
R9-31-715	Repeal
R9-31-716	Repeal
R9-31-718	Repeal
R9-31-719	Repeal
R9-31-1601	Amend
R9-31-1616	Repeal
R9-31-1617	Repeal
R9-31-1618	Repeal
R9-31-1619	Repeal
R9-31-1620	Repeal
R9-31-1621	Repeal
R9-31-1624	Repeal

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

Authorizing statute: A.R.S. §§ 36-2904, 36-2903.01, 36-2986

Implementing statute: A.R.S. §§ 36-2903.01, 36-2987, 36-2985, 36-2989

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 2576, July 21, 2006

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

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

The rules include definitions that apply specifically to Standards of Payments and outline the provisions that apply to payments, including reimbursement to a provider, transferring payments, contracting with entities for specialized services and when submitting claims. The proposed rulemaking is intended to update these rules, ensuring that they represent the Agency's current practice.

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

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

7. 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

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

The economic impact will be minimal since the majority of the rules have been repealed and cross-referenced to Chapter 22 acute rules. The same practice is applied to the Kids Care population as for the Acute population in these particular subjects. The few amended rules have been updated for clarity and conciseness.

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

Name: Mariaelena Ugarte

Notices of Proposed Rulemaking

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

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of September 18, 2006. Please send written comments to the above address by 5:00 p.m., November 13, 2006. E-mail comments will be accepted.

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

Date: November 14, 2006

Time: 2:00 p.m.

Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034

Nature: Public Hearing

Date: November 14, 2006

Time: 2:00 p.m.

Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701

Nature: Public Hearing

Date: November 14, 2006

Time: 2:00 p.m.

Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004

Nature: Public Hearing

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS

Section
R9-31-107. ~~Standards for Payments Related Definitions~~ Repealed

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

- R9-31-701. ~~Scope of the Administration's Liability Standards for Payments Related Definitions~~
- R9-31-701.10. General Requirements
- R9-31-702. ~~Charges to Members Repealed~~
- R9-31-703. ~~Claims Repealed~~
- R9-31-704. ~~Transfer of Payments Repealed~~
- R9-31-705. ~~Payments by Contractors Repealed~~
- R9-31-707. ~~Payments for Newborns Repealed~~
- R9-31-709. ~~Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care Repealed~~
- R9-31-710. ~~Payments for Non-hospital Services Repealed~~
- R9-31-711. ~~Copayments Repealed~~
- R9-31-713. ~~Payments Made on Behalf of a Contractor; Recovery of Indebtedness Repealed~~
- R9-31-714. ~~Payments to Providers Repealed~~
- R9-31-715. ~~Hospital Rate Negotiations Repealed~~
- R9-31-716. ~~Specialty Contracts Repealed~~
- R9-31-718. ~~Contractor Performance Measure Outcomes Repealed~~
- R9-31-719. ~~Reinsurance Repealed~~

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

Section

- R9-31-1601. General Requirements
- R9-31-1616. ~~Standards for Payments Repealed~~
- R9-31-1617. ~~Prior Authorization Repealed~~
- R9-31-1618. ~~Claims Submission to the Administration Repealed~~
- R9-31-1619. ~~Claims Review Repealed~~
- R9-31-1620. ~~Charges to Members Repealed~~
- R9-31-1621. ~~Transfer of Payments Repealed~~
- R9-31-1624. ~~Specialty Contracts Repealed~~

ARTICLE 1. DEFINITIONS

~~R9-31-107. Standards for Payments Related Definitions Repealed~~

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

~~"Covered charges" means billed charges that represent medically necessary, reasonable, and customary items of expense for Title XXI covered services that meet medical review criteria of the Administration or contractor.~~

~~"Medical review" means a review involving clinical judgment of a claim or a request for a service before or after it is paid or rendered to ensure that services provided to a member are medically necessary and covered services and that required authorizations are obtained by the provider. The criteria for medical review are established by the contractor based on medical practice standards that are updated periodically to reflect changes in medical care.~~

~~"Outlier" means a hospital claim or encounter in which the Title XXI inpatient hospital days of care have operating costs per day that meet the criteria described in A.A.C. R9-22-712.~~

~~"Tiered per diem" means a payment structure in which payment is made on a per day basis depending upon the tier into which the Title XXI inpatient hospital day of care is assigned.~~

ARTICLE 7. STANDARDS FOR PAYMENTS

~~R9-31-701. Scope of the Administration's Liability Standards for Payments Related Definitions~~

- ~~A. The Director has full operational authority to adopt rules and to use the appropriate rules adopted for the development and management of a contractor payment system under A.R.S. §§ 36-2986 and 36-2987.~~
- ~~B. If the federal government eliminates federal funding for the program or significantly reduces the federal funding below the estimated federal expenditures, the Administration shall immediately stop processing all applications and shall provide at least 30 days advance notice to contractors and members that the program will terminate under A.R.S. § 36-2985.~~
- ~~C. The Administration shall bear no liability for providing covered services to or completing a plan of treatment for any~~

member beyond the date of termination of the member's eligibility.

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

"Covered charges" means billed charges that represent medically necessary, reasonable, and customary items of expense for Title XXI covered services that meet medical review criteria of the Administration or contractor.

"Medical review" means a review involving clinical judgment of a claim or a request for a service before or after it is paid or rendered to ensure that services provided to a member are medically necessary and covered services and that required authorizations are obtained by the provider. The criteria for medical review are established by the contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

"Outlier" means a hospital claim or encounter in which the Title XXI inpatient hospital days of care have operating costs per day that meet the criteria described in A.A.C. R9-22-712.

"Tiered per diem" means a payment structure in which payment is made on a per-day basis depending upon the tier into which the Title XXI inpatient hospital day of care is assigned.

R9-31-701.10. General Requirements

The following areas of reimbursement requirements under Chapter 22, Article 7 are applicable for AHCCCS covered services provided to a member under the KidsCare program:

1. Scope of the Administration's Liability R9-22-701.10
2. Charges to Members R9-22-702
3. Payments by the Administration or a Contractor R9-22-703 and R9-22-705
4. Transfer of Payments R9-22-704
5. Payments for Newborns R9-22-707
6. Specialty Contracts R9-22-705, R9-22-712 and R9-22-201
7. Payments to Providers R9-22-714
8. Hospital Rate Negotiations R9-22-715
9. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care R9-22-709
10. Payments for Non-hospital services R9-22-710
11. Copayments R9-22-711
12. Payments Made on Behalf of a Contractor; Recovery of Indebtedness R9-22-713
13. Contractor Performance Measure Outcomes R9-22-719
14. Reinsurance R9-22-720

R9-31-702. Charges to Members Repealed

- ~~**A.** Except as provided in subsections (B), (C), and (D), an AHCCCS registered provider shall not do either of the following, unless services are not covered or without first receiving verification from the Administration that the person was not an eligible person on the date of service:~~
- ~~1. Charge, submit a claim to, or demand or collect payment from a person claiming to be an eligible person; or~~
 - ~~2. Refer or report a person claiming to be an eligible person to a collection agency or credit reporting agency.~~
- ~~**B.** An AHCCCS registered provider that submits a claim shall not charge more than the actual, reasonable cost of providing the covered service.~~
- ~~**C.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member as follows:~~
- ~~1. To collect an authorized copayment;~~
 - ~~2. To recover from a member that portion of a payment made by a third party to the member if the payment duplicates AHCCCS paid benefits and is not assigned to a contractor; or~~
 - ~~3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member's AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied.~~
- ~~**D.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment for services from a member, if:~~
- ~~1. The member requests the provision of a service that is not covered or not authorized by a contractor or the Administration;~~
 - ~~2. The provider prepares and provides the member with a document describing the overall services and the approximate cost of the services; and~~
 - ~~3. The member signs the document prior to services being provided, indicating that the member understands and accepts responsibility for payment.~~

R9-31-703. Claims Repealed

- ~~**A.** Claims submission to contractors. An AHCCCS registered provider shall submit to a contractor all claims for services rendered to a member enrolled with the contractor as specified in R9-31-705.~~

B. Overpayments for AHCCCS Services:

1. An AHCCCS registered provider shall notify the Administration when the provider discovers an overpayment was made by the Administration.
2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS registered provider fails to return the incorrect payment amount to the Administration.

R9-31-704. ~~Transfer of Payments Repealed~~

- A.** Billing agent. For purposes of this Section, a business agent is a firm such as a billing service or accounting firm that renders statements and receives payment in the name of the contractor or AHCCCS registered provider.
- B.** Allowable transfer of payments. The Administration or the contractor may make payments to other than the AHCCCS registered provider, and the Administration may make payments to other than the contractor after considering whether:
1. There is an assignment to a government agency or an assignment under a court order; or
 2. A business agent's compensation is:
 - a. Related to the cost of processing the statements; and
 - b. Not dependent upon the actual collection of payment.
- C.** Prohibition of transfer of payments to factors. The Administration shall not make payment for covered services furnished to a member by a contractor or an AHCCCS registered provider to, or through a factor, either directly, or by virtue of a power of attorney given to the factor.

R9-31-705. ~~Payments by Contractors Repealed~~

- A.** General requirements. A contractor shall contract with providers as described in A.A.C. R9-22-705.
- B.** Timely submission of claims. A contractor shall pay timely submitted claims as described in A.A.C. R9-22-705.
- C.** Date of claim. A contractor shall determine the date of receipt of a claim as described in A.A.C. R9-22-705.
- D.** Payment for inpatient hospital services. A contractor shall reimburse a provider for inpatient hospital services as described in A.A.C. R9-22-705.
- E.** Payment for outpatient hospital services. A contractor shall reimburse a provider for outpatient hospital services as described in A.A.C. R9-22-705.
- F.** Inpatient and outpatient out-of-state hospital payments. A contractor shall reimburse a provider for out-of-state services as described in A.A.C. R9-22-705.
- G.** Payment for observation days. A contractor shall reimburse a provider for services related to observation days as described in A.A.C. R9-22-705.
- H.** Review of claims. If a contractor conducts a review of claims, the contractor shall conduct the review as described in A.A.C. R9-22-705.
- I.** Non-hospital claims. A contractor shall pay claims for services other than hospital services as described in A.A.C. R9-22-705.
- J.** Payments to hospitals. A contractor shall reimburse for hospital services as described in A.A.C. R9-22-705.
- K.** Interest payment. A contractor shall pay interest on late claims as described in A.A.C. R9-22-705.

R9-31-707. ~~Payments for Newborns Repealed~~

If a mother is enrolled on the date of her newborn baby's birth, a contractor shall be financially liable under the mother's capitation to provide all Title XXI covered services to the newborn baby from the date of birth until the Administration is notified of the birth.

R9-31-709. ~~Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care Repealed~~

A contractor's liability to hospitals for the provision of emergency and subsequent care shall be under A.R.S. § 36-2989, A.A.C. R9-22-709, R9-31-705, and Article 2 of this Chapter.

R9-31-710. ~~Payments for Non-hospital Services Repealed~~

Capped fee for service. The Administration shall pay for Kids Care services in accordance with A.A.C. R9-22-710.

R9-31-711. ~~Copayments Repealed~~

An individual determined eligible under this Chapter shall comply with A.A.C. R9-22-711.

R9-31-713. ~~Payments Made on Behalf of a Contractor; Recovery of Indebtedness Repealed~~

- A.** The Administration may make payments on behalf of a contractor in order to prevent a suspension or termination of AHCCCS services after considering whether:
1. A contractor does not adjudicate a valid accrued claim within the period set forth under subcontract, or
 2. A contractor does not adjudicate 99 percent of valid accrued claims within 90 days of receipt from the AHCCCS registered provider.
- B.** If a contractor or a subcontracting provider receives an overpayment or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the Children's Health Insurance Program Fund.

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- ~~C.~~ The Administration may recover the indebtedness or overpayment from a contractor or a subcontracting provider in circumstances including the following:
 - ~~1. Negotiation of a repayment agreement executed with the Administration;~~
 - ~~2. Withholding or offsetting against current or future prepayments or other payments to be paid to the contractor or subcontracting provider; or~~
 - ~~3. Enforcement of, or collection against, the performance bond, deposit, financial reserve, or other financial security under A.R.S. § 36-2986.~~
- ~~D.~~ Except as specifically provided for in this Article, the Administration is not liable for payment for medical expenses incurred by members enrolled with contractors.

R9-31-714. Payments to Providers Repealed

The Administration shall pay providers under A.A.C. R9-22-714.

R9-31-715. Hospital Rate Negotiations Repealed

- ~~A.~~ A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for inpatient hospital admissions and outpatient hospital services as described in A.A.C. R9-22-715.
- ~~B.~~ The Administration may negotiate or contract with a hospital on behalf of a contractor as described in A.A.C. R9-22-715.

R9-31-716. Specialty Contracts Repealed

The Director may negotiate specialty contracts under A.A.C. R9-22-716.

R9-31-718. Contractor Performance Measure Outcomes Repealed

Contractor performance measure outcomes shall be under A.A.C. R9-22-719.

R9-31-719. Reinsurance Repealed

A contractor shall submit to the Administration all reinsurance claims for services rendered to a member enrolled with the contractor as specified in A.A.C. R9-22-720.

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

R9-31-1601. General Requirements

- ~~A.~~ A Native American who is a member may receive:
 - ~~1. Covered acute care services specified in this Chapter from:
 - ~~a. An IHS area office Indian Health Service (IHS) under A.R.S. § 36-2982 that has a signed IGA agreement with the Administration;~~
 - ~~b. A Tribal Facility under A.R.S. § 36-2982, or~~
 - ~~c. A contractor under A.R.S. § 36-2901.~~~~
 - ~~2. Covered behavioral health care services as specified in this Chapter from:
 - ~~a. An IHS area office Indian Health Service (IHS) under A.R.S. § 36-2982 that has a signed IGA agreement with the Administration;~~
 - ~~b. A Tribal Facility under A.R.S. § 36-2982, or~~
 - ~~c. A RBHA or TRBHA.~~~~
- ~~B.~~ In providing covered services to a member, IHS and a Tribal Facility shall comply with:
 - ~~1. Federal and state law;~~
 - ~~2. The IGA, if applicable; and~~
 - ~~3. This Chapter as applicable.~~
- ~~C.~~ An individual or an entity that provides covered services for the IHS or a Tribal Facility shall be an AHCCCS registered provider.
- ~~D.~~ The IHS and a Tribal Facility under 42 CFR 431.110 shall meet state requirements as a Medicaid provider. Medical records shall:
 - ~~1. Conform to 9 A.A.C. 20 for documentation of medical, diagnostic and treatment data;~~
 - ~~2. Include a detailed record of:
 - ~~a. All medically necessary services provided to a member by the IHS or a Tribal Facility;~~
 - ~~b. All emergency services provided by a provider or a noncontracting provider for a member enrolled with the IHS or receiving services from a Tribal Facility;~~
 - ~~c. All covered services provided through a referral to a facility or provider outside the IHS or Tribal facility network, and~~~~
 - ~~3. Facilitate follow-up treatment.~~
- ~~E.~~ As specified in A.R.S. §§ 36-2986 and 36-2992, the IHS or a Tribal Facility shall advise the Director or designee immediately, in writing, of any case of suspected fraud or abuse.

B. IHS, a Tribal facility or a referred provider must meet the requirements described in Chapter 22, Article 7 in order to receive reimbursement for AHCCCS covered services. For purposes of the following rules where the term “provider” exists apply IHS, Tribal facility or referred provider. The following areas of reimbursement requirements under Chapter 22, Article 7 are applicable for AHCCCS covered services provided to a Native American member under the KidsCare program:

1. Scope of the Administration’s Liability R9-22-701.10
2. Payments for Services Provided to Eligible Native Americans R9-22-708
3. Prior Authorization R9-22-703
4. Claims Review R9-22-703
5. Charges to Members R9-22-702
6. Payments by the Administration R9-22-703
7. Transfer of Payments R9-22-704
8. Specialty Contracts R9-22-712 and R9-22-201

R9-31-1616. Standards for Payments Repealed

- ~~**A.** The Administration has no financial responsibility for services provided to a member beyond the effective date of termination of a member’s eligibility. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in 9 A.A.C. 22, Articles 2 and 5 and as specified in contract.~~
- ~~**B.** The Administration shall make payments to IHS or a Tribal Facility as required under A.R.S. § 36-2987(A).~~
- ~~**C.** The Administration shall pay inpatient and outpatient hospital services rendered by a provider under referral from the IHS or a Tribal Facility provider based on A.R.S. §§ 36-2987, 36-2903.01, and 9 A.A.C. 22, Article 7, as applicable. The Administration shall pay hospital claims using the discounts and penalties specified in A.R.S. § 36-2987(C).~~
- ~~**D.** The Administration shall pay for non-hospital services as described in R9-22-710.~~

R9-31-1617. Prior Authorization Repealed

~~A provider and a noncontracting provider shall request prior authorization from the Administration according to this Article.~~

R9-31-1618. Claims Submission to the Administration Repealed

~~**A.** Timely Submission of Claims:~~

1. ~~Under A.R.S. § 36-2904(H)(3), the Administration regards a paper or electronic claim as submitted on the date that it is received by the Administration. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim;
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.~~
2. ~~Except as provided in subsection (A)(6), the IHS, a Tribal Facility, or a provider under referral shall initially submit a claim for covered services to the Administration not later than:
 - a. Six months from the date of service; or
 - b. Six months from the date of eligibility posting, whichever is later.~~
3. ~~The Administration shall deny the claim if the claim is not initially submitted within:
 - a. The six-month period from the date of service; or
 - b. Six months from the date of eligibility posting, whichever is later.~~
4. ~~Except as provided in subsection (A)(6), if the IHS, a Tribal Facility, or a provider under referral submits an initial claim within the six-month period noted in subsection (A)(2), the IHS, Tribal Facility, or provider shall submit a clean claim to the Administration not later than:
 - a. 12 months from the date of service; or
 - b. 12 months from the date of eligibility posting, whichever is later.~~
5. ~~The claim is clean when it meets the requirements under A.R.S. § 36-2904(H).~~
6. ~~Under A.R.S. § 36-2987, the IHS, a Tribal Facility, or a provider under referral shall:
 - a. Initially submit a claim for inpatient hospital services not later than six months from the date of member discharge for each claim, and
 - b. Submit a clean claim for inpatient hospital services not later than 12 months from the date of discharge for each claim.~~

~~**B.** Claims Processing~~

1. ~~The Administration shall notify the IHS, a Tribal Facility, or a provider under referral with a remittance advice when a claim is processed for payment.~~
2. ~~The Administration shall pay valid clean claims in a timely manner according to 42 CFR 447.45, February 15, 1990, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments:
 - a. 90 percent of valid clean claims shall be paid within 30 days of the date of receipt of the claim;~~

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- b. 99 percent of valid clean claims shall be paid within 90 days of the date of receipt of the claim; and
- e. The remaining one percent of valid clean claims shall be paid within 12 months of the date of receipt of a claim.
- 3. A claim is paid on the date indicated on the disbursement check.
- 4. A claim is denied as of the date of the remittance advice.
- 5. The Administration shall process a hospital claim according to R9-22-712.
- C. Overpayments for Title XXI Services.**
 - 1. The IHS, a Tribal Facility, or a provider under referral shall notify the Administration when the provider discovers an overpayment was made by the Administration.
 - 2. The Administration shall recoup an overpayment from a future claim cycle if the IHS, a Tribal Facility, or a provider under referral fails to return the incorrect payment amount to the Administration.
- D. Postpayment Claims Review.**
 - 1. The Administration shall conduct postpayment review of claims paid by the Administration if monies have been erroneously paid to the IHS, a Tribal Facility, or a provider under referral.
 - 2. The Administration shall recoup an overpayment from a future claim cycle if the IHS, a Tribal Facility, or a provider under referral fails to return the incorrect payment amount to the Administration.
 - 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
 - 4. The IHS, a Tribal Facility, or a provider under referral may file a grievance or request for hearing under Article 8 of this Chapter if the AHCCCS registered provider disagrees with the recoupment action.
- E. Claims Review**
 - 1. The IHS, a Tribal Facility, or a provider under referral shall:
 - a. Obtain prior authorization from the Administration for non-emergency hospital admissions and covered services as specified in Articles 2 and 12 of this Chapter;
 - b. Notify the Administration of hospital admissions under Article 2, and
 - c. Make records available for review by the Administration.
 - 2. The Administration shall reduce payment of or deny a claim if the IHS, Tribal Facility, or a provider under referral fails to obtain prior authorization or to notify the Administration under Article 2 and this Article.
 - 3. The Administration may conduct prepayment medical review and post-payment review on all hospital claims, including outlier claims.
 - 4. If the Administration issues prior authorization for a specific level of care but subsequent medical review indicates that a different level of care was medically appropriate, the claim shall be paid, or adjusted to pay, for the cost of the appropriate level of care.
 - 5. Post-payment reviews shall comply with A.R.S. § 36-2987.

R9-31-1619. Claims Review Repealed

The IHS and a Tribal Facility shall follow the procedures for a claims review as specified in A.A.C. R9-22-703.

R9-31-1620. Charges to Members Repealed

- A.** Except as provided in subsections (B) and (C), the IHS, a Tribal Facility, or a provider under referral, shall not do either of the following, unless services are not covered or without first receiving verification from the Administration that the person was not an eligible person on the date of service:
 - 1. Charge, submit a claim to, demand or collect payment from a person claiming to be an eligible person; or
 - 2. Refer or report a person claiming to be an eligible person to a collection agency or credit reporting agency.
- B.** An AHCCCS registered provider that makes a claim under this Article shall not charge more than the actual, reasonable cost of providing the covered service.
- C.** The IHS, a Tribal Facility, or a provider under referral may charge, submit a claim to, demand or collect payment from a member as follows:
 - 1. To collect an authorized copayment;
 - 2. To recover from a member that portion of a payment made by a third party to the member if the payment duplicates AHCCCS-paid benefits and is not assigned to a contractor; or
 - 3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member's AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied.
- D.** An AHCCCS registered provider may charge, submit a claim to, or demand, or collect payment for services from a member, if:
 - 1. The member requests the provision of a service that is not covered or not authorized by a contractor or the Administration;
 - 2. The provider prepares and provides the member with a document describing the overall services and the approximate cost of the services; and
 - 3. The member signs the document prior to services being provided, indicating that the member understands and accepts

responsibility for payment

R9-31-1621. ~~Transfer of Payments Repealed~~

- ~~**A.** Business agent. For purposes of this Section, a business agent is a firm such as a billing service or accounting firm that renders statements and receives payment in the name of the contractor or AHCCCS registered provider.~~
- ~~**B.** Allowable transfer of payments. The Administration may make payments to other than the IHS, a Tribal Facility, or a provider under referral after considering whether:~~
- ~~1. There is an assignment to a government agency or there is an assignment under a court order; or~~
 - ~~2. A business agent's compensation is:~~
 - ~~a. Related to the cost of processing the statements; and~~
 - ~~b. Not dependent upon the actual collection of payment.~~

R9-31-1624. ~~Specialty Contracts Repealed~~

~~The Director may at any time negotiate or contract for specialized hospital and medical services including, but not limited to, transplants, neonatology, neurology, cardiology, and burn care. Specialty contractors shall take precedence over all other contractual arrangements between the IHS or a Tribal Facility. If the Administration and a hospital perform a transplant surgery on a member that does not have a contracted rate, the system shall not reimburse a hospital more than the contracted rate established by the Administration.~~